

CITY OF ATLANTA

HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT

REQUEST FOR PROPOSAL

**FC-7782, GREEN ACRES ATL ENERGY PARK AT HARTSFIELD-
JACKSON INTERNATIONAL AIRPORT**



**MIGUEL SOUTHWELL
AVIATION GENERAL MANAGER
DEPARTMENT OF AVIATION**

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CHIEF PROCUREMENT OFFICER
DEPARTMENT OF PROCUREMENT**



Kasim Reed
Mayor

CITY OF ATLANTA

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Department of Procurement
Adam L. Smith, Esq., CPPO, CPPB, CPPM, CPP
Chief Procurement Officer
asmith@atlantaga.gov

February 5, 2015

ATTENTION INTERESTED PROPONENT:

Your firm is hereby invited to submit to the City of Atlanta (the "City"), Department of Procurement (the "DOP"), a Proposal for **Project Number: FC-7782, Green Acres ATL Energy Park at Hartsfield-Jackson Atlanta International Airport**. This solicitation seeks a Proponent to lease up to thirty (30) acres of land from the City to design, construct and operate a facility capable of repurposing/reprocessing/recycling at least ninety (90) percent of waste generated at Hartsfield Jackson Atlanta International Airport (ATL) and the City Department of Public Works and delivered to **Green Acres ATL Energy Park** (the "ATL Energy Park") as defined in the procurement documents and Ground Lease.

A **Pre-Proposal Conference** will be held on **Tuesday, February 17, 2015, at 2:00 P.M., at the Hartsfield-Jackson Technical Support Campus, 1255 South Loop Road, College Park, Georgia 30337**. The purpose of the Pre-Proposal Conference is to provide Proponents with detailed information regarding the Procurement process and to address questions and concerns. There will be representatives from the Department of Aviation, Risk Management and the Office of Contract Compliance available at the conference to discuss this project and to answer any questions. Attendance to the Pre-Proposal Conference is strongly encouraged. An optional site tour will immediately follow the conference.

The last date to submit questions will be **Friday, February 20, 2015, no later than 3:00 P.M.** Questions may be sent to **Mano Smith, CPPO, CPPB, Contract Administrator**, via email at mosmith@atlantaga.gov, or facsimile at 404-658-7705. Questions will be responded to in the form of an addendum.

Your response to this Request for Proposal ("**Proposal**") must be received by designated staff of the Department of Procurement at 55 Trinity Avenue, S.W., City Hall, Suite 1900, Atlanta, GA 30303, **no later than 2:00 P.M., on Wednesday, March 11, 2015**. Any Proposal received after this time will not be considered and will be rejected and returned.

Request for Proposal

**Project Number: FC-7782, Green Acres ATL Energy Park at Hartsfield-Jackson Atlanta
International Airport**

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All Proposals will be publicly opened and read at 2:00 P.M. on the respective due date in Suite 1900, 1st Floor, 55 Trinity Avenue, S.W., City Hall, Atlanta, GA 30303.

If you have any questions regarding this project, please contact **Mano Smith, CPPO, CPPB, Contract Administrator**, at 404-330-6351, or by email at mosmith@atlantaga.gov. Any questions regarding the procedures for purchasing a copy of the document or obtaining a copy of the plan holder's list should be directed to Jessica Boston, Administrative Assistance Senior, at 404-330-6903, or by e-mail at jaboston@atlantaga.gov.

The City reserves the right to cancel any and all solicitations and to accept or reject, in whole or in part, any and all Proposals when it is for good cause and in the best interest of the City.

Thank you for your interest in doing business with the City.

Sincerely,



Adam L. Smith

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PART 1: Information and Instructions to Respondents

Part 1; Information and Instructions to Respondents

- 1. Sustainability Project Being Procured:** This Request for Proposals (“RFP”) from qualified respondents (“Respondent” or “Respondents”) by the City of Atlanta (“City”), on behalf of its Department of Aviation (“DOA”), seeks a Proponent to lease up to thirty (30) acres of land from the City to design, construct and operate a facility capable of repurposing/reprocessing/recycling at least ninety (90) percent of waste generated at Hartsfield Jackson Atlanta International Airport (ATL) and the City Department of Public Works and delivered to **Green Acres ATL Energy Park** (the “**ATL Energy Park**”) as defined in the procurement documents and Ground Lease. A more detailed description of the sustainability Project sought in this procurement is set forth in **Exhibit E–Background and Program Requirements**, attached to the Ground Lease Agreement.; **FC-7782, Green Acres ATL Energy Park**, included in this RFP at Part 5 (“Ground Lease”).¹ As indicated more fully within the terms of the Ground Lease, final approval of items such as the ATL Energy Park concept and rental terms and conditions are contingent upon consent and approval of the City and the Federal Aviation Administration (FAA).

The relationship between the City and the successful Respondent shall begin on the Commencement Date (as defined in the Ground Lease) and is anticipated to exist for 30 years thereafter, unless earlier cancelled or terminated in accordance with the Ground Lease terms.

- 2. General Information:** The Airport services more passengers than any other airport in the world. Over 250,000 passengers daily traveling to major international and domestic markets around the globe. The Airport is owned by the City and is operated by DOA. It is located 10 miles from downtown Atlanta on 4,750 acres. The Airport’s boundaries reach into the political jurisdictions of unincorporated Clayton County, unincorporated Fulton County, and the cities of College Park, Atlanta, Hapeville and East Point.
- 3. Method of Source Selection:** This procurement is being conducted in accordance with all applicable provisions of the City of Atlanta’s Code of Ordinances, including its Procurement and Real Estate Code. The particular method of source selection for the sustainability Project sought in this RFP is Code Section 2-1189; Competitive Sealed Proposals. By submitting a Proposal concerning this procurement, a Respondent acknowledges that it is familiar with all laws applicable to this procurement, including, but not limited to, the City’s Code of Ordinances and Charter, which laws are incorporated into this RFP by reference.
- 4. Minimum Qualifications; Authority to Transact Business in Georgia:** To be eligible to participate in this procurement, Respondent must meet the following minimum qualifications:

¹ All capitalized terms contained in the Ground Lease are incorporated into this RFP.

- 4.1. A Joint Venture is required for this RFP.
- 4.2. Each Respondent shall engage a General Contractor licensed in the State of Georgia.
- 4.3. Each Respondent shall engage a design Firm(s) inclusive of a State of Georgia Registered Engineer who will be required to seal and sign the final construction drawings and specifications.
- 4.4. Each Respondent must be able to demonstrate a minimum of two (2) successful project experiences designing and in construction or operating facilities which reprocessed/recycled at least ten (10) thousand tons Municipal Solid Waste (MSW) per year received without the use of incineration.
5. **No Offer by City; Firm Offer by Respondent:** This procurement does not constitute an offer by City to enter into a Ground Lease and cannot be accepted by any Respondent to form a Ground Lease. This procurement is only an invitation for offers from interested Respondent and no offer shall bind the City. A Respondent's offer is a firm offer and may not be withdrawn except under the rules specified in the City's Code of Ordinances and other Applicable Law.
6. **Proposal Deadline:** Your response to this RFP must be received by the City's Department of Procurement, 55 Trinity Avenue, S.W., City Hall, Suite 1900, Atlanta, Georgia 30303-0307 no later than 2:00 p.m., EST (as verified by the Bureau of National Standards) on **Wednesday, March 11, 2015**. Any Proposal received after this time will not be considered and will be rejected and returned.
7. **Pre-Proposal Conference: Attendance at the pre-proposal conference is not mandatory; however, it is recommended that each Respondent attend** the Pre-Proposal Conference which is scheduled for **Tuesday, February 17, 2015, at 2:00 P.M., at the Hartsfield-Jackson Technical Support Campus, 1255 South Loop Road, College Park, Georgia 30337**. Each Respondent is solely responsible for being fully informed regarding all existing and expected conditions and matters which might affect the cost or performance of the Ground Lease. Any failure to fully investigate the subject matter of this RFP and the Ground Lease site shall not relieve any Respondent from the responsibility of properly evaluating the difficulty or cost of successfully implementing the sustainability Project. There will be a site tour immediately following the Pre-Proposal Conference.
8. **Procurement Questions; Prohibited Contacts:** Any questions regarding this RFP shall be submitted in writing to the City's contact person, **Mano Smith, Contract Administrator, CPPO, CPPB**, Department of Procurement, 55 Trinity Avenue, SW, Suite 1900, Atlanta, Georgia 30303-0307, by fax (404) 658-7705 or e-mail **MOSmith@atlantaga.gov**, on or before **Friday, February 20, 2015 at 3 pm**. Questions received after the designated period will not be considered. Any response made by the City will be provided in writing to all

Respondents by addendum. Respondents may not rely on verbal responses to any question submitted concerning this RFP. All respondents and representatives of any respondents are strictly prohibited from contacting any other City employees or any third-party representatives of the City on any matter having to do with this RFP. All communications by any Respondents concerning this RFP must be made to the City's contact person referenced above, or any other City representative designated by the Chief Procurement Officer in writing.

9. **Ownership of Proposals:** Each Proposal submitted to the City will become the property of the City, without compensation to a Respondent, for the City's use, in its sole discretion.
10. **Applicable City OCC Programs:** The City's OCC Programs applicable to this procurement are set forth in **Appendix A; Office of Contract Compliance Submittals**, attached to the Ground Lease included in this RFP. By submitting a Proposal in response to this procurement, each Respondent agrees to comply with such applicable OCC Programs.
11. **Respondent's Examination of RFP:** Each Respondent is responsible for examining with appropriate care the complete RFP and all addenda, and for informing itself with respect to all conditions which might in any way affect the cost or the performance of any sustainability Project. Failure to do so will be at the sole risk of the Respondent, who is deemed to have included all costs for performance of the sustainability Project in its Proposal.

Each Respondent shall promptly notify City in writing on or before **Friday, February 20, 2015 at 3 pm**, if the Respondent find discrepancies, errors, ambiguities or omissions in the RFP, or if its intent or meaning appear unclear or ambiguous, or if any other question arise relative to the RFP. Replies to such notices may be made in the form of an addendum to the RFP, which will be issued simultaneously to all potential Respondents who have obtained the RFP from City and are on the plan holder's list for this RFP.

City may, by addendum, modify any provision or part of the RFP at any time prior to the proposal due date and time. The Respondent shall not rely on oral clarifications to the RFP. Respondents shall only consider clarifications confirmed by a written Addendum issued by the City as authoritative.

12. **Rejection of Proposals; Cancellation of Solicitation; Waiver of Technicalities:** The City reserves the right to reject any Proposal or all Proposals or to waive any technical defect in a Proposal. The City also may cancel this procurement at any time in accordance with the City of Atlanta Code of Ordinances.
13. **Award of Ground Lease; Execution:** If the City awards a Ground Lease pursuant to this procurement, the City will prepare and forward to the successful Respondent a Ground Lease for execution substantially in the form included in **Part 5** of this RFP. By submitting a

proposal in response to this procurement, each Respondent acknowledges and agrees that it will be bound by the terms of the Ground Lease in the event a contract is awarded to it.

- 14. Illegal Immigration Reform and Enforcement Act:** All Proponents are advised that this RFP is subject to the Illegal Immigration Reform and Enforcement Act (the “Act”). Pursuant to Act, the Proponent must provide proof of its registration with and continuing participation in the E-Verify Program established by the United States Department of Homeland Security. A completed Contractor Affidavit, set forth in **Part 4; Form 1; Illegal Immigration Reform and Enforcement Act Forms**, must be submitted at the time of submission, prior to the time for opening the Proposal. Under the laws of the State of Georgia, the City cannot consider any Proposal which does not include completed forms required under the Act. It is not the intent of the City of Atlanta to provide detailed information or legal advice concerning the Act in this RFP. All Proponents intending to do business with the City are responsible for independently apprising themselves of and complying with the requirements of the Act and assessing its effect on City procurements and their participation in those procurements. For additional information on the E-Verify program or to enroll in the program, go to: <https://e-verify.uscis.gov/enroll>. Additional information on completing and submitting the Contractor Affidavit precedes the Affidavit at **Part 4, Form 1**.
- 15. Gratuities and Kickbacks.** In accordance with the City of Atlanta’s Code of Ordinances, Section 2-1484, as may be amended, it shall be unethical for any person to offer, give or agree to give any employee or former employee or for any employee or former employee to solicit, demand, accept or agree to accept from another person a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefore. Additionally, it shall be unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.
- 16. Fraud and Misrepresentation.** Any written or oral information provided by Lessee, directly or indirectly related to the performance of the sustainability Project required by this Agreement, constitutes material representations upon which the City relies for the requirements of the Agreement and compliance with local, state and federal laws, rules and regulations. Lessee agrees to notify the City immediately of any information provided to the City that it knows and/or believes to be false and/or erroneous and immediately provide correct information to the City and take corrective action. Lessee further agrees to notify the City immediately of any actions or information that it believes would constitute fraud or misrepresentation to the City in performance of this Agreement, whether or not

such information actually constitutes fraud and/or misrepresentations, by contacting the Integrity Line 1-800-884-0911. Lessee agrees to place signage provided by the City regarding the Integrity Line at the location to which Lessee's employees report to perform the services required by this Agreement. Lessee acknowledges and agrees that a finding of fraud or other impropriety on the part of the Lessee or any of its subcontractors may result in suspension or debarment of the Lessee; and the City may pursue any other actions or remedies that the City may deem appropriate. Lessee agrees to include this clause in its subcontracts and take appropriate measures to ensure compliance with this provision.

- 17. Georgia Open Records Act.** Information provided to the City is subject to disclosure under the Georgia Open Records Act ("**GORA**"). Pursuant to O.C.G.A. § 50-18-72(a)(34), "[a]n entity submitting records containing trade secrets that wishes to keep such records confidential under this paragraph shall submit and attach to the records an affidavit affirmatively declaring that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10 [O.C.G.A. § 10-1-760 et seq.]."
- 18. Electronic Proposal Documents.** This RFP is being made available to all Respondents by electronic means. By responding to this RFP, Respondent acknowledges and accepts full responsibility to ensure that it is responding to the correct form of RFP, including any addenda issued by the City's Department of Procurement. Respondent acknowledges and agrees that in the event of a conflict between the RFP in the Respondent's possession and the version maintained by the Department of Procurement, the version maintained by the City's Department of Procurement shall govern. The RFP document is available at www.atlantaga.gov.

Part 2: General Contents of Proposals

Part 2; General Contents of Proposals

General Contents of Proposals: A Respondent must submit a complete proposal in response to this RFP in the format specified in this RFP. A proposal will consist of two (2) separate volumes. Volume I will consist of information drafted and provided by the Respondent and Volume II will consist of information provided by the Respondent on forms provided by the City in this RFP.

- 1. VOLUME I:** At a minimum, each Respondent is required to draft and provide all of the following information in **Volume I** of its proposal:

(a) Cover Letter: The cover letter must include a letter with the Respondent's full legal name, address, telephone number and fax number, signed by a person authorized to act on behalf of the Respondent. The cover letter shall introduce the Respondent Team and shall include the name, title, address, e-mail address, telephone number and fax number of the person signing the letter and the name, title, address, e-mail address, telephone number and fax number of one (1) contact person to whom all future correspondence and/or communications may be directed by the City concerning this procurement, if that person is different from the person executing the letter. The letter shall also designate the type of business entity that proposes to enter into a Contract with the City and the identity of any business entities that will comprise the Respondent. The letter shall include a narrative statement of why the Respondent's approach to providing the sustainability Project solicited in this RFP represents the best value to the City.

(b) Table of Contents.

(c) Executive Summary: Each Respondent is required to provide an overview of the Respondent's qualifications to provide the sustainability Project being procured through this RFP. At a minimum, the Executive Summary must contain the following information:

- (1)** Complete legal name of the Respondent and the name of the legal entities that comprise the Respondent. The Respondent must provide the domicile where each entity comprising it is organized, including entity name, brief history of the entity, contact name, address, phone number, and facsimile number, as well as the legal structure of the entity and a listing of major satellite offices;
- (2)** The general and specific capabilities and experience of the Respondent's Team. Each Respondent must identify examples where team members have worked together to complete a project and discuss how the team was formed and how the team will function as an integrated unit;
- (3)** A declarative statement as to whether the Respondent or any member of the Respondent Team has an open dispute with the City or is involved in any litigation

associated with work in progress or completed in both private and public sector during the past five (5) years;

- (4) If Respondent is a corporation, partnership or limited liability company formed in the State of Georgia, Respondent must include a copy of its Certificate of Incorporation or its Certificate of Organization from the Georgia Secretary of State's office;
- (5) If Respondent is a corporation, partnership or limited liability company formed outside the State of Georgia, Respondent must include a copy of its Certificate of Organization from the state in which the Respondent was formed and a Certificate of Authority from the Secretary of the State of Georgia authorizing the Respondent to transact business within the State of Georgia;
- (6) Provide a copy of the Respondent Team's Joint Venture Agreement; and
- (7) A description of the Respondent's plan for complying with the City's EBO goals (see **Appendix A**). Respondent's narrative, which is complimentary to the forms required at **Appendix A**, shall include detailed information regarding the subcontractor(s) the Respondent intends to use (or, in the case of joint ventures ("JV"), the minority interest holder(s) of Respondent) and shall indicate the role and responsibilities these firms will be assigned. Each Respondent must provide a letter from each subcontractor (or JV minority interest holder) indicating that the firm concurs with the role and responsibility Respondent has described.

(d) Organizational Structure. The Respondent's Organizational Structure Section of the Proposal shall introduce the proposed Respondent Team by:

- (1) Providing the Respondent's Management and Organizational Chart both graphically and in narrative format. The organizational chart and narrative shall provide a description of how the Respondent will organizationally provide the sustainability Project, as well as depict the relationship of its key personnel to that of the Principal-in-Charge and other key members of the management team. The Organizational Chart must include the proposed Design Firm(s) and General Contractor(s);
- (2) Providing a description of how this Organizational Structure will facilitate the sustainability Project requested and how an efficient flow of information will be realized from the Organizational Structure to ensure all deliverables are fully coordinated within the organization; and

(e) Overall Experience, Qualifications and Performance.

- (1) Describe the Respondent's experience and qualifications in developing operating and maintaining facilities which divert municipal solid waste from landfill disposal, increase opportunities for renewable energy and demonstrate beneficial use of

byproducts. The Respondent must fully describe experience, the attributes of the facility, and the volume of material or production of their material processed and/or produced for each of the following components:

1.1.e.1.1 Full stream recycling process and methodologies for each of the material categories:

- Recyclables
- Compost
- Construction & Demolition; and
- Safe disposal of non-hazardous waste;

1.1.e.1.2 Grey water filtration systems capable of recapturing water for reuse within a full stream recycling environment;

1.1.e.1.3 Agricultural production and commercial greenhouses in an urban environment;

1.1.e.1.4 The capture and reuse of CO₂ making production neutral or positive within an enclosed agricultural environment;

1.1.e.1.5 Waste management conversion to a renewable energy source;

1.1.e.1.6 Anaerobic digestion in an enclosed environment and composting biopolymer materials at an accelerated rate in an anaerobic digestion environment;

1.1.e.1.7 Pressurized environments and bio-filtration systems;

1.1.e.1.8 State the extra ordinary measures that will be taken to ensure that odor is contained within the site; and

1.1.e.1.9 State the actions that will be taken to ensure there will be no rodent/bird attractions.

(2) Describe the Respondent's experience in the management of Professional Architectural and Engineering Firms.

(3) For each example project Respondent must fully complete and submit a separate **Form 9 Client Reference**.

(4) Provide a minimum of three (3) example sustainability projects the Design Firm(s) has completed during the past five (5) years. For each example project provide a summary of the physical attributes of the facility and any special recognition received concerning the design including Leadership in Energy Efficient Design (LEED) certifications. Discuss specific "green" initiatives incorporated into the design of each example project. Discuss measures to ensure air quality management internal and external to the loading/unloading areas of the facility. Identify if the

proposed Design Firm(s) has provided any Architectural and Engineering Design Services for the Department of Aviation.

- (5) Provide a minimum of three (3) example projects the proposed General Contractor(s) has completed during the past five (5) years. For each example project provide the physical attributes of the facility, the duration of the construction, and any “fast track” initiatives utilized during the construction.

(f) **Management Plan:** The Respondent’s business plan will be evaluated on the completeness and overall quality of its approach in the management of the Project. Respondent must demonstrate the following:

(1) Respondent’s proposed method to:

1.1.f.1.1 Identify and resolve issues during the project duration; and

1.1.f.1.2 Make critical decisions.

(g) **Key Personnel/Resumes.** Provide resumes for key personnel, including all of the Respondent’s key managerial positions included on the Organizational Chart referenced above. Provide a list of all other key positions within Respondent’s organization and the duties of each position. Resumes shall be organized as follows: name and title, professional background, current and past relevant employment, education, certifications and list of two (2) projects that involve a similar operation with the project description, project actual or expected completion date, role of individual and reference contact. By submitting a proposal in response to this RFP, Respondent acknowledges and agrees that it is committing to use the individuals identified in Key Personnel for this RFP. In the event there is a need to replace key personnel after Respondent submits its proposal or during the term of this Agreement, changes may only be made with the prior written consent of the Aviation General Manager. Identify and provide resumes for the individuals that the Team will use to fill the following positions:

(1) **Lessee:**

Principal-in-Charge;
Lead Project Manager;
Quality Control Manager; and
Business Manager.

(2) **Design Firm:**

Principal-in-charge;
Quality Control Coordinator; and
Lead Design Engineer.

(3) General Contractor:

Principal-In-Charge;
Overall Superintendent;
Civil Superintendent; and
Quality Control Manager.

(4) Operation and Maintenance

Principal-in-Charge;
Facility Manager; and
Chief Engineer.

(h) Conceptual Submittal. Respondent is required to provide a detailed narrative describing the Respondent's proposed concept.

- (1)** The narrative must describe the facilities' physical attributes, capacity, environmental controls, and any additional information necessary to fully describe the proposed facility;
- (2)** Identify the acreage required to meet the minimum infrastructure requirements contained in **Exhibit E Background and Program requirements**. Identify any additional acreage required to meet the 90% diversion requirement contained in Exhibit I Milestones and Liquidated Damages;
- (3)** Identify any design features the Respondent proposes which sets the facility apart as the "ATL Energy Park"; and
- (4)** Provide equipment specifications and descriptions to be incorporated into the facility; and
- (5)** Submit a maximum of twenty-five (25) color sketches depicting the proposed facility. Sketches may be 11" x 17" but must be folded to 8½" x 11" and shall include:

The overall design of the ATL Energy Park; and

Material processing flow and processing timelines.

- (6)** It is estimated that the initial (March 1, 2017) infrastructure requirements identified in the **Ground Lease Agreement, Exhibit E: Background and Program Requirements**, will result in 50%-60% of baseline MSW being diverted from landfills facilities. Respondent must detail what additional infrastructure and/or process will be implemented to achieve the required 90% diversion requirement and the timeline for these additional infrastructure and/or process becoming operational.

(i) Financing Plan.

Each Respondent shall include the following related to the development of the ATL Energy Park:

1.1.i.1.1 A financial plan estimating construction costs, professional fees, construction and permanent financing, other potential sources of equity/capital, and any other information or financial data which would assist in evaluating the financial viability of the Project; and

1.1.i.1.2 Ten year proforma (from the estimated opening date) for each major component of the project identifying operating revenue and debt service requirements; and

1.1.i.1.3 Respondent's recommendations regarding the lease terms and conditions included in the Ground Lease Agreement. Respondent's recommendations will not be included in the evaluation of the Financing Plan but will serve as the basis for final Lease terms and conditions negotiations. (Respondents are advised that the final Lease terms and conditions must be approved by the City as well as the Federal Aviation Administration {FAA}). While the City desires the Respondents recommendations regarding the lease terms and conditions. At this time, the monthly rent for the unimproved land is \$6,800.00 per acre per year. The rental rate will be adjusted when the land, as improved by the successful Proponent, is re-appraised as required by the FAA. Respondents are advised that the existing appraisal will be substantially out of date and that the lease rates will need to be reset at the time of lease execution. Within 4 to 6 months of the Commencement Date of lease execution the City will obtain a new appraisal to establish the Fair Market Value (FMV) and construct a matrix that:

1.1.i.1.3.1 Outlines annual escalations over the term;

1.1.i.1.3.2 Defers rental obligations during the construction period; and

1.1.i.1.3.3 Outlines the annual requirement over the term beyond the deferral period to collect the deferred rent.

The matrix will serve as the basis for rental terms and conditions negotiations between the City and the successful Respondent. Upon completion of negotiations the rental matrix will be added to the Ground Lease as Appendix C.

- 2. Submission of Proposals:** Each Respondent must submit a complete response in accordance with the requirements of this RFP. The format mandated by this RFP is not negotiable. Submittal Forms must be completed in full. All blank spaces must be typed or legibly hand written in blue ink.

- (a) Proposals shall be signed by hand by a principal of the Respondent with the authority to enter into a Contract with the City. Joint Ventures or partnerships must designate one (1) joint venture/partnership to represent the joint venture/partnership in submitting and executing a Proposal. Each Respondent is responsible for the preparation of its Proposal and the costs of preparing and submitting them.
- (b) Each Respondent acknowledges and agrees that each Proposal when submitted to the City will become the property of the City, without compensation to a Respondent, for the City's use, at its sole discretion.
- (c) Proposals must be submitted in sealed envelope(s) or package(s) and the outside of the envelope(s) or package(s) must clearly identify the name of the project: **FC-7782; Green Acres ATL Energy Park** and the name and address of Respondent. All Proposals must be submitted to:

Adam L. Smith, Esq., CPPO, CPPB, CPPM, CPP
Chief Procurement Officer
Department of Procurement
55 Trinity Avenue, S.W.
City Hall South, Suite 1900
Atlanta, Georgia 30303-0307

- (d) A Respondent must submit **one (1) original and ten (10) copies** of its Proposal. Each Proposal must be submitted on 8½" x 11" single-sided, typed pages, using 12-point font size and such pages must be inserted in a standard three-hole ring binder. Respondent may, due to size limitations, utilize 11" x 17" pages to fulfill submittal requirements; however these sized sheets must be folded to 8½" x 11" to meet the size requirements. Each Proposal must contain an index and separate sections for the information requirements set forth in this RFP, as well as for the Forms required to be submitted.

Submittals: **The following submittals must be completed and submitted with each Proposal.**

Item #	Required Proposal Submittal Check Sheet ²	Check (v)
VOLUME 1		
1.	Table of Contents	
2.	Executive Summary (Cover Letter and Executive Summary)	
3.	Organizational Structure	
4.	Overall Experience, Qualifications and Performance of the Respondent	
5.	Management Plan	
6.	Key Personnel/Resumes, Staffing and Training	
7.	Conceptual Submittal	
8.	Financing Plan	
VOLUME II		
1.	Form 1: Illegal Immigration Reform and Enforcement Act Forms	
2.	Form 2: Disclosure Form and Questionnaire	
3.	Form 3: Not-Applicable	
4.	Form 4: Proponent Financial Disclosure	
5.	Form 5: Acknowledgement of Insurance and Bonding Requirements	
6.	Form 6: Not Applicable	
7.	Form 7: Acknowledgement of Addenda	
8.	Form 8: Respondent Contact Directory	
9.	Form 9: Client Reference	
10.	Appendix A: City's Office of Contract Compliance Submittals (EBO Forms 1 through 5)	

² This table is included solely for Respondents convenience and may be used to track the preparation and submittal of certain required information with its Proposal.

Part 3: Evaluation of Proposals

Part 3; Evaluation of Proposals

All proposals will be evaluated by an evaluation committee in accordance with the City's Code of Ordinances, the criteria specified below and considering the information required to be submitted in each proposal. All Proposals will be evaluated using the following Evaluation Form:

EVALUATION FORM			
CATEGORIES	CATEGORY SCORE	RELATIVE WEIGHT	TOTAL CATEGORY SCORE
Organizational Structure		5	
Overall Experience, Qualifications and Performance of the Respondent		15	
Management Plan		5	
Key Personnel		5	
Concept		25	
Financing Plan		20	
Financial Capability		10	
OCC Program: Equal Business Opportunity (EBO)		15	
		100%	
TOTAL SCORE			

For purposes of evaluating all of the Proposals received by the City, the City will assess a score between one (1) and ten (10) for each Category noted above. The total category score is calculated by multiplying the Category Score and the assigned Relative Weight (i.e., Category Score x Relative Weight = total category score). The Total Score is calculated by adding each Total Category Score together. The result of the calculation of the Total Score will be used to determine which Respondent has received the highest Total Score.

Part 4: Required Submittal Forms

FORM 1
Illegal Immigration Reform and Enforcement Act Forms
INSTRUCTIONS TO RESPONDENTS

All Respondents must comply with the Illegal Immigration Reform and Enforcement Act of 2011, O.G.G.A § 13-10-90, et seq. (“IIREA”). Respondents must familiarize themselves with IIREA and are solely responsible for ensuring their compliance therewith. Respondents may not rely on these instructions for that purpose. These instructions are offered only as a convenience to assist Respondents in complying with the requirements of the City’s procurement process and the terms of this solicitation document.

1. The attached Contractor Affidavit must be filled out COMPLETELY and submitted with the respondent’s submission prior to the due date.
2. The Contractor Affidavit must contain an active Federal Work Authorization Program (“E-Verify”) User ID Number and Date of Registration.
3. Where the business structure of a Respondent is such that Respondent is required to obtain an Employer Identification Number (“EIN”) from the Internal Revenue Service, Respondent must complete the Contractor Affidavit on behalf of, and provide a Federal Work Authorization User ID Number issued to, the Respondent itself (see Example 1 below). Where the business structure of a Respondent does not require it to obtain an EIN, each entity comprising Respondent must submit a separate Contractor Affidavit (see Example 2 below).

Example 1, ABC, Inc. and XYZ, Inc. form and submit a response as Happy Day, LLC. Happy Day, LLC must enroll in the E-verify program and submit a single Contractor Affidavit in the name of Happy Day, LLC which includes the Federal Work Authorization User ID Number issued to Happy Day, LLC.

Example 2, ABC, Inc. and XYZ, Inc. execute a joint venture agreement and submit a response under the name Happy Day, JV. If based on the nature of the JV agreement, Happy Day, JV is not required to obtain an EIN from the IRS, then the response submitted by Happy Day, JV must include both a Contractor Affidavit for ABC, Inc. and a Contractor Affidavit for XYZ, Inc.
4. All Contractor Affidavits must be executed by an authorized representative of the entity named in the Affidavit.
5. All Contractor Affidavits must be notarized.
6. All Contractor Affidavits must be submitted with the Respondent’s response to the solicitation document.
7. Subcontractor and sub-subcontractor affidavits are not required at the time of response submission, but will be required at contract execution or in accordance with the timelines set forth in IIREA.

FORM 1

Contractor Affidavit under O.C.G.A. § 13-10-91(b)(1)

By executing this Contractor Affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of the City of Atlanta has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b). Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Contractor: _____

Name of Project: _____

Name of Public Employer: City of Atlanta

I hereby declare under penalty of perjury that the forgoing is true and correct.

Executed on _____, ____, 20__ in _____ (city), _____ (state)

Signature of Authorized Officer or Agent

Printed name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE

ME ON THIS THE ____, DAY OF _____, 201____

NOTARY PUBLIC

My Commission Expires: _____

FORM 1
Subcontractor Affidavit under O.C.G.A. § 13-10-91(b)(3)

By executing this Subcontractor Affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with _____ (name of contractor) on behalf of the City of Atlanta has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five business days of receipt. If the undersigned subcontractor receives notice of receipt of an affidavit from any sub-subcontractor that has contracted with a sub-subcontractor to forward, within five business days of receipt, a copy of such notice to the contractor. Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Subcontractor: _____

Name of Project: _____

Name of Public Employer: City of Atlanta

I hereby declare under penalty of perjury that the forgoing is true and correct.

Executed on _____, _____, 20__ in _____ (city), _____ (state)

Signature of Authorized Officer or Agent

Printed name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE

ME ON THIS THE _____, DAY OF _____, 201_____

NOTARY PUBLIC

My Commission Expires: _____

FORM 1

Sub-subcontractor Affidavit under O.C.G.A. § 13-10-91(b)(4)

By executing this affidavit, the undersigned sub-subcontractor verifies its compliance with O.C.G.A. §13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract for _____ (name of subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract) and _____ (name of contractor) on behalf of the City of Atlanta has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned sub-subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned sub-subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the sub-subcontractor with the information required by O.C.G.A. § 13-10-91(b). The undersigned sub-subcontractor shall submit, at the time of such contract, this affidavit to _____ (name of subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract). Additionally, the undersigned sub-subcontractor will forward notice of the receipt of any affidavit from a sub-subcontractor to _____ (name of subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract). Sub-subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Sub-Subcontractor: _____

Name of Project: _____

Name of Public Employer: City of Atlanta

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, _____, 20__ in _____ (city), _____ (state)

Signature of Authorized Officer or Agent

Printed name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE
ME ON THIS THE ____, DAY OF _____, 201____

NOTARY PUBLIC

My Commission Expires: _____

FORM 2
CONTRACTOR DISCLOSURE FORM
DEFINITIONS FOR THE PURPOSES OF THIS DISCLOSURE

"Affiliate"	Any legal entity that, directly or indirectly through one of more intermediate legal entities, controls, is controlled by or is under common control with the Respondent or a member of Respondent.
"Contractor"	Any person, partnership or entity having a contract with the City.
"Control"	The controlling entity: (i) possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the controlled entity, whether through the ownership of voting securities or by contract or otherwise; or (ii) has direct or indirect ownership in the aggregate of fifty one (51%) or more of any class of voting or equity interests in the controlled entity.
"Respondent"	<p>Any individual, partnership or entity that submits a response to a solicitation.</p> <p>If the Respondent is an individual, then that individual must complete and sign this Contractor Disclosure Form where indicated.</p> <p>If the Respondent is a partnership (including but not limited to, joint venture partnership), then each partner in the partnership must complete and sign a separate Contractor Disclosure Form where indicated.</p> <p>If the Respondent is a legal entity (e.g., corporation, limited liability company), then an authorized representative of that entity must complete and sign this Contractor Disclosure where indicated.</p> <p>If the Respondent is a newly formed entity (formed within the last three years), then an authorized representative of that entity must complete and sign this Contractor Disclosure Form where indicated, and each of the members or owners of the entity must also complete and sign separate Contractor Disclosure Form where indicated.</p>

Instructions: Provide the following information for the entity, partner or individual completing this Disclosure (the "Individual/Entity").

A. Basic Information:

1. Name of Respondent:
2. Name of the authorized representative for the Respondent:

B. Individual/Entity Information:

Principal Office Address:

Telephone and Facsimile Numbers:

E-Mail Address:

Name and title of Contact Person for the Individual/Entity:

Is the individual/Entity authorized to transact business in the state of Georgia?

- ☐ Yes (Attach Certificate of Authority to transact business in Georgia from Georgia Secretary of State.)
- ☐ No

C. Questionnaire

If you answer "YES" to any of the questions below, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, the name of the court and the file or reference number of the case, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your Proposal.

1. Please describe the general development of the Respondent's business during the past ten (10) years, or such shorter period of time that the Respondent has been in business.

2. Are there any lawsuits, administrative actions or litigation to which Respondent is currently a party or has been a party (either as a plaintiff or defendant) during the past ten (10) years based upon fraud, theft, breach of contract, misrepresentation, safety, wrongful death or other similar conduct? YES NO

☐ ☐

3. If "yes" to question number 2, were any of the parties to the suit a bonding company, insurance company, an owner, or otherwise? If so, attach a sheet listing all parties and indicate the type of company involved. YES NO

☐ ☐

4. Has the Respondent been charged with a criminal offense within the last ten (10) years? YES NO

☐ ☐

5. Has the Respondent received any citations or notices of violation from any government agency in connection with any of Respondent's work during the past ten (10) years (including OSHA violations)? Describe any citation or notices of violation which Respondent received. YES NO

☐ ☐

6. Please state whether any of the following events have occurred in the last ten (10) years with respect to the Respondent. If any answer is yes, explain fully the circumstances surrounding the subject matter of the affirmative answer:

Whether Respondent, or Affiliate currently or previously associated with Respondent, has ever filed a petition in bankruptcy, taken any actions with respect to insolvency, reorganization, receivership, moratorium or assignment for the benefit of creditors, or otherwise sought relief from creditors? YES NO

☐ ☐

Whether Respondent was subject of any order, judgment or decree not subsequently reversed, suspended or vacated by any court permanently enjoining Respondent from engaging in any type of business practice? YES NO

☐ ☐

Whether Respondent was the subject of any civil or criminal proceeding in which there was a final adjudication adverse to Respondent which directly arose from activities conducted by Respondent.	YES	NO
	<input type="checkbox"/>	<input type="checkbox"/>

7. Has any employee, agent or representative of Respondent who is or will be directly involved in the project, in the last ten (10) years:

(a) directly or indirectly, had a business relationship with the City?	YES	NO
	<input type="checkbox"/>	<input type="checkbox"/>

(b) directly or indirectly, received revenues from the City?	YES	NO
	<input type="checkbox"/>	<input type="checkbox"/>

(c) directly or indirectly, received revenues from conducting business on City property or pursuant to any contract with the City?	YES	NO
	<input type="checkbox"/>	<input type="checkbox"/>

8. Whether any employee, agent, or representative of Respondent who is or will be directly involved in the project has or had within the last ten (10) years a direct or indirect business relationship with any elected or appointed City official or with any City employee?	YES	NO
	<input type="checkbox"/>	<input type="checkbox"/>

9. Whether Respondent has provided employment or compensation to any third party intermediary, agent, or lobbyist to directly or indirectly communicate with any City official or employee, or municipal official or employee in connection with any transaction or investment involving your firm and the City?	YES	NO
	<input type="checkbox"/>	<input type="checkbox"/>

10. Whether Respondent, or any agent, officer, director, or employee of your organization has solicited or made a contribution to any City official or member, or to the political party or political action committee within the previous five (5) years?	YES	NO
	<input type="checkbox"/>	<input type="checkbox"/>

11. Has the Respondent or any agent, officer, director, or employee been terminated, suspended, or debarred (for cause or otherwise) from any work being performed for the City or any other Federal, State or Local Government?	YES	NO
	<input type="checkbox"/>	<input type="checkbox"/>

12. Has the Respondent, member of Respondent's team or officer of any of them (with respect to any matter involving the business practice or activities of his or her employer been notified within the five (5) years preceding the date of this offer that any of them are the target of a criminal investigation, grand jury investigation, or civil enforcement proceeding?	YES	NO
	<input type="checkbox"/>	<input type="checkbox"/>

13. Please identify any Personal or Financial Relationships that may give rise to a conflict of interest as defined below *[Please be advised that you may be ineligible for award of contract if you have a personal or financial relationship that constitutes a conflict of interest that cannot be avoided]:*

(a) Personal relationships: executives, board members and partners in firms submitting offers must disclose familial relationships with employees, officers and elected officials of the City of Atlanta. Familial relationships shall include spouse, domestic partner registered under section 94-133, mother, father, sister, brother, and	YES	NO
	<input type="checkbox"/>	<input type="checkbox"/>

natural or adopted children of an official or employee.

(b) Financial relationships: Respondent must disclose any interest held with a City employee or official or family members of a City employee or official, which may yield, directly or indirectly, a monetary or other material benefit to the

	YES	NO
	<input type="checkbox"/>	<input type="checkbox"/>

Respondent or the Respondent's family members. Please describe:

D. REPRESENTATIONS

Anti-Lobbying Provision. All respondents, including agents, employees, representatives, lobbyists, attorneys and proposed partner(s), subcontractor(s) or joint venturer(s), will refrain, under penalty of the respondent's disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process.

Certification of Independent Price Determination/Non-Collusion. Collusion and other anticompetitive practices among offerors are prohibited by city, state and federal laws. All Respondents shall identify a person having authority to sign for the Respondent who shall certify, in writing, as follows:

"I certify that this bid/proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid or offer for the same supplies, labor, services, construction, materials or equipment to be furnished or professional or consultant services, and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of city, state and federal law and can result in fines, prison sentences, and civil damages awards. By signing this document, I agree to abide by all conditions of this solicitation and offer and certify that I am authorized to sign for this Respondent/Offeror."

Certify Satisfaction of all Underlying Obligations. (If Applicable) If a Contract is awarded through this solicitation, then such Contractor should know that before final payment is made to a Contractor by the City, the Contractor shall certify to the City in writing, in a form satisfactory to the City, that all subcontractors, materialmen suppliers and similar firms or persons involved in the City contract have been paid in full at the time of final payment to the Contractor by the City or will be paid in full utilizing the monies constituting final payment to the Contractor.

Confidentiality. Details of the proposals will not be discussed with other respondents during the selection process. Respondent should be aware, however, that all proposals and information submitted therein may become subject to public inspection following award of the contract. Each respondent should consider this possibility and, where trade secrets or other proprietary information may be involved, may choose to provide in lieu of such proprietary information, an explanation as to why such information is not provided in its proposal. However, the respondent may be required to submit such required information before further consideration.

Equal Employment Opportunity (EEO) Provision. All bidders or offerors will be required to comply with sections 2-1200 and 2-1414 of the City of Atlanta Code of Ordinances, as follows: During the performance of the agreement, the Contractor agrees as follows:

- a) The Contractor shall not discriminate against any employee, or applicant for employment, because of race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, disability, or political affiliation. As used here, the words "shall not discriminate" shall mean and include without limitation the following:

Recruited, whether by advertising or other means; compensated, whether in the form of rates of pay, or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.

The Contractor agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of the EEO clause.

- b) The Contractor shall, in all solicitations or advertisements for employees, placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, disability, or political affiliation.
- c) The Contractor shall send to each labor union or representative of workers with which the Contractor may have a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of the Contractor's commitments under the equal employment opportunity program of the City of Atlanta and under the Code of Ordinances and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor shall register all workers in the skilled trades who are below the journeyman level with the U.S. Bureau of Apprenticeship and Training.
- d) The Contractor shall furnish all information and reports required by the contract compliance officer pursuant to the Code of Ordinances, and shall permit access to the books, records, and accounts of the Contractor during normal business hours by the contract compliance officer for the purpose of investigation so as to ascertain compliance with the program.
- e) The Contractor shall take such action with respect to any subcontractor as the city may direct as a means of enforcing the provisions of paragraphs (a) through (h) herein, including penalties and sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in or is threatened with litigation as a result of such direction by the city, the city will enter into such litigation as is necessary to protect the interest of the city and to effectuate the equal employment opportunity program of the city; and, in the case of contracts receiving federal assistance, the Contractor or the city may request the United States to enter into such litigation to protect the interests of the United States.
- f) The Contractor and its subcontractors, if any, shall file compliance reports at reasonable times and intervals with the city in the form and to the extent prescribed by the contract compliance officer. Compliance reports filed at such times directed shall contain information

as to employment practices, policies, programs and statistics of the Contractor and its subcontractors.

- g) The Contractor shall include the provisions of paragraphs (a) through (h) of this equal employment opportunity clause in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.
- h) A finding, as hereinafter provided, that a refusal by the Contractor or subcontractor to comply with any portion of this program, as herein provided and described, may subject the offending party to any or all of the following penalties:

- (1) Withholding from the Contractor in violation all future payments under the involved contract until it is determined that the Contractor or subcontractor is in compliance with the provisions of the contract;

- (2) Refusal of all future bids for any contract with the City of Atlanta or any of its departments or divisions until such time as the Contractor or subcontractor demonstrates that there has been established and there shall be carried out all of the provisions of the program as provided in the Code of Ordinances;

- (3) Cancellation of the public contract;

- (4) In a case in which there is substantial or material violation of the compliance procedure herein set forth or as may be provided for by the contract, appropriate proceedings may be brought to enforce those provisions, including the enjoining, within applicable law, of Contractors, subcontractors or other organizations, individuals or groups who prevent or seek to prevent directly or indirectly compliance with the policy as herein provided.

Prohibition on Kickbacks or Gratuities/Non-Gratuity. The undersigned acknowledges the following prohibitions on kickbacks and gratuities:

It is unethical for any person to offer, give or agree to give any employee or former employee a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefor.

It is unethical for any employee or former employee to solicit, demand, accept or agree to accept from another person a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefor.

It is also unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

Declaration

Under penalty of perjury, I declare that I have examined this Contractor Disclosure Form and all attachments to it, if applicable, and, to the best of my knowledge and belief all statements contained herein and in any attachments, if applicable, are true, correct and complete.

I certify that this offer is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting an offer for the same supplies, services, construction, or professional or consultant services, and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of city, state and federal law and can result in fines, prison sentences, and civil damages awards. I agree to abide by all conditions of this solicitation and offer and certify that I am authorized to sign for this Respondent.

Sign here if you are an individual:

Printed Name: _____

Signature: _____

Date: _____

Subscribed and sworn to or affirmed by _____ **(name) this** ____ **day of** _____, 20__.

Notary Public of _____(state)

My commission expires: _____

Sign here if you are an authorized representative of a responding entity or partnership:

Printed Name of Entity or Partnership: _____

Signature of authorized representative: _____

Title: _____

Date: _____, 20__

Subscribed and sworn to or affirmed by _____ **(name), as the** _____ **(title) of** _____ **(entity or** partnership name) **this** ____ **day of** _____, 20__.

Notary Public of _____(state)

My commission expires: _____

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FORM 4

Proponent Financial Disclosure

Instructions: It is necessary for the City to evaluate, verify, and understand the Proponent's financial capability and stability to undertake and perform the Services contemplated in this Solicitation. To accomplish this task, the Proponent must provide accurate and legible financial disclosures to the City as requested below.

A "Proponent" is an individual, entity or partnership submitting a proposal or bid in response to a Solicitation.

1. If the Proponent is an individual, financial disclosures for that individual must be provided.
2. If the Proponent is an entity or partnership, financial disclosures for that entity or partnership must be provided.
3. If the Proponent is a newly formed entity or partnership (formed within the last three years), financial disclosures for that entity or partnership must be provided together with full financial disclosure from the entity's or partnership's owners. Financial Disclosure includes a full response to all questions and requests for documentation listed in this **Form 4**.

For example, if the Proponent is a newly formed entity (formed within the last three years) made up of two separate entities (e.g., a majority interest owner and a minority interest owner), then financial disclosure is required from the Proponent entity, and financial disclosure is also required from each of the two owners (majority entity owner and minority entity owner) as well.

The Proponent (and its owners, if applicable) must submit hard copies of all financial disclosures in response to this **Form 4**.

Part A - General Information:

Name of the Proponent: _____

Name of individual, entity or
partnership completing this Form: _____

Relationship of individual, entity
or partnership completing this Form
to the Proponent: _____

Contact information of individual,
entity or partnership completing
this Form: _____

Address _____

Phone Number(s) _____

Email: _____

Part B: Financial Information:

1. The Proponent, and its owners, if applicable, should demonstrate its financial capability and stability by selecting and providing documentation from one of the following three groups of requests (see below). Please circle which group, (a), (b), or (c), is selected and provide the supporting documentation with the proposal/bid.
 - (a) Financial statements for the three (3) most recent consecutive fiscal years, audited by a Certified Public Accountant ("CPA"), including:
 - (i) Income Statement;
 - (ii) Balance Sheet; and
 - (iii) Statement of Cash Flows.
 - (b) Financial statements for the three (3) most recent consecutive fiscal years, either reviewed or compiled by a Certified Public Accountant ("CPA"), including:
 - (i) Income Statement;
 - (ii) Balance Sheet; and
 - (iii) Satisfactory proof of Proponent's ability to obtain a Performance Bond for the amount described in **Exhibit D**, if applicable.
 - (c) Unaudited, self-prepared financial statements for the three (3) most recent consecutive fiscal years, including:
 - (i) Income Statement;
 - (ii) Balance Sheet;
 - (iii) Satisfactory proof of Proponent's ability to obtain a Performance Bond for the amount described in **Exhibit D**, if applicable;
 - (iv) Two (2) banks or other institutional lenders' references; and
 - (v) Dunn and Bradstreet report for the last two (2) years.

2. Fill in the blanks below to provide a summary of all of the Proponent's assets and liabilities for the three (3) most recent years (calculated from the date of the end of the fiscal year).

ALL FIGURES BELOW MUST BE REPRESENTED IN U.S. CURRENCY (\$).

Standard currency of Proponent's Financial Statements: _____

The exchange rate used: _____ = US \$ _____

Most recent three (3) years

	<u>Year: 20</u> (Thousands)	<u>Year: 20</u> (Thousands)	<u>Year: 20</u> (Thousands)
Current Assets	\$.....	\$.....	\$.....
Current Liabilities	\$.....	\$.....	\$.....
Property & Equip.	\$.....	\$.....	\$.....
Working Capital	\$.....	\$.....	\$.....
Sales/ Revenue	\$.....	\$.....	\$
Total Assets	\$.....	\$.....	\$.....
Total Liabilities	\$.....	\$.....	\$.....
Interest Charges	\$.....	\$.....	\$.....
Net Income	\$.....	\$.....	\$.....
Net-Worth	\$.....	\$.....	\$.....

3. Do you plan to use or require an open line of credit for the project? Yes or No.

If yes, the Proponent must provide the source of the line of credit on bank letterhead for the bank providing the line of credit. The bank contact information must include: contact name, title, address, telephone, fax and e-mail address.

Declaration

Under penalty of perjury, I declare that I have examined this Affidavit Disclosure form and all attachments to it, if applicable, and, to the best of my knowledge and belief, and all statements contained in it and all attachments, if applicable, are true, correct and complete.

Whether you are an individual executing this form or you are an authorized representative of an entity executing this form, the person signing below must sign or affirm in the presence of a Notary Public. The Notary Public's signature and seal must be provided, together with the date of the notarial act.

Sign here if you are an individual:

Printed Name: _____

Signature: _____

Date: _____, 20__

Subscribed and sworn to or affirmed by _____ (name) this _____ day of _____, 201__.

Notary Public of _____(state)

My commission expires: _____

Sign here if you are an authorized representative of a responding entity:

Printed Name of Entity: _____

Signature of authorized representative: _____

Title: _____

Date: _____, 20__

Subscribed and sworn to or affirmed by _____ (name), as the _____ (title) of _____ (entity name) this _____ day of _____, 201__.

Notary Public of _____(state)

My commission expires: _____

FORM 5

Acknowledgment of Insurance and Bonding Requirements

I, _____, on behalf of _____, Proponent, acknowledge that if selected as the successful Proponent for **FC-7782, Green Acres ATL Energy Park**. Proponent shall comply completely and promptly with all insurance requirements contained in the Agreement attached to this Solicitation and appendices thereto, pertaining to insurance.

Proponent understands that it is expected to share these requirements with potential sureties and insurance brokers, agents, underwriters, etc. prior to any award of an Agreement and to take all necessary steps to ensure compliance with the applicable requirements without delay. Proponent understands, acknowledges and agrees that any failure to fully comply with these requirements within ten (10) days of the date Proponent receives a final Agreement document from the City may result in the forfeiture of the Proposal guarantee submitted with this Proposal and/or the disqualification of Proponent from further consideration for the Agreement.

By executing this Acknowledgement of Insurance Requirements, I represent that the Proponent understands and agrees to comply unconditionally with all requirements related to insurance contained in the Agreement attached to this Solicitation. Further, by signing below, I represent that I am authorized to make the representations contained herein on behalf of Proponent.

Dated this _____ day of _____, 2015.

Corporate Proponent:
[Insert Corporate Name]

By: _____

Print Name: _____

Title: _____

Corporate Secretary/Assistant
Secretary (Seal)

Non-Corporate Proponent:
[Insert Proponent Name]

By: _____

Print Name: _____

Title: _____

Notary Public (Seal)

My Commission Expires: _____

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FORM 7

Acknowledgment of Addenda

Each Respondent must complete and submit and acknowledgement with its solicitation that it has received all Addenda issued for this solicitation. This form has been included and may be used to satisfy this requirement.

This is to acknowledge receipt of the following **Addenda** for **FC-7782, Green Acres ATL Energy Park**:

☐ None (Check if None)

1. _____;
2. _____;
3. _____; and
4. _____.

Dated the _____ day of _____, 20____.

Corporate Proponent:
[Insert Corporate Name]

By: _____

Name: _____

Title: _____

**Corporate Secretary/Assistant
Secretary (Seal)**

Non-Corporate Proponent:
[Insert Proponent Name]

By: _____

Name: _____

Title: _____

Notary Public (Seal)
My Commission Expires:

FORM 8

RESPONDENT CONTACT DIRECTORY

This Respondent Contact Directory should include the names, positions/titles, firms, mailing addresses, phone and fax numbers and e-mail addresses for each of the following as it pertains to each of the firms in a Respondent's team:

1. At least two individuals authorized to represent the firm for purposes of this Solicitation; and
2. All of Respondent's subcontractors (if any).

[illegible]

FORM 9

Reference List

Each Respondent must provide a list of at least three (3) references using the below-referenced format. The City is interested in reviewing references that are able to attest to a Proponent's performance ability and credibility in a particular industry or trade.

Reference: Name
 Address
 City, State, Zip
 Phone
 Fax

Project Title:

Contact Person: _____
Direct Telephone: _____
Email Address: _____

Date(s) of Project: _____

Description of Services:

Total Amount of Contract Including Change Orders:

Proponent's Role and Responsibilities:

Current Completion Status:

(Use the Same Format to Provide the Additional References)

Part 5: Ground Lease Agreement

City of Atlanta
Department of Aviation
Hartsfield-Jackson Atlanta International Airport

GROUND LEASE AGREEMENT

with

for

XX Acre Property on the Forest Parkway

of City of Atlanta Land

in

Clayton County, Georgia

_____ **2015**

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GROUND LEASE AGREEMENT
for
X.X Acre Property on the Forest Parkway
of City of Atlanta Land
in
Clayton County, Georgia

GEORGIA. . . . CLAYTON COUNTY

THIS GROUND LEASE AGREEMENT ("Ground Lease" or "Lease Agreement"), is made and entered into on this the ____ day of _____ ("Commencement Date"), by and between the CITY OF ATLANTA, a municipal corporation of the State of Georgia (the "City" or "Lessor") and _____, a _____ corporation ("Lessee") (collectively the City and Lessee shall be referred to as the "Parties").

WITNESSETH THAT:

WHEREAS, the City owns and operates Hartsfield-Jackson Atlanta International Airport (the "Airport"), and also owns a 39 acre tract of undeveloped land located near the intersection of Forest Parkway and Derrick Jones Road in Clayton County, Georgia (the "Forest Parkway Tract"); and

WHEREAS, the Forest Parkway Tract is proximate to the Airport and the City desires to develop, or have others develop, the land with high quality facilities designed for the use by firms engaged in sustainability business and others; and

WHEREAS, Lessee desires to lease up to __ acres (the "Leased Premises"), as defined in Subsection 1.01 below, within the Forest Parkway Tract for use in designing, constructing, financing, operating and maintaining the Green Acres Atlanta Energy Park (the "Energy Park"), and the City is willing to lease such premises to Lessee under the terms and conditions hereinafter set forth; and

WHEREAS, the execution of this lease on the part of the City has been authorized by Resolution No. XXXX of the Council of the City of Atlanta adopted on XXXXX and approved by the Mayor on XXXXX and Resolution XXXX adopted on XXXXX and approved by the Mayor on XXXXX, in the form and manner of that copy attached hereto as **Exhibit B** and made a part hereof by reference.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL TERMS AND CONDITIONS hereinafter set forth, the City hereby leases and demises to Lessee, and Lessee hereby hires and takes from the City for its exclusive use, and for the uses and purposes herein enumerated, the Leased Premises hereinafter described, subject to the following terms and conditions:

SECTION 1 - LEASED PREMISES:

Subsection 1.01 - Description of Leased Premises. The Leased Premises herein demised consist of approximately ___ acres of land (XXXXX square feet) of the Forest Parkway Tract, as more particularly delineated and described on the survey and legal description attached hereto as **Exhibit A** and made a part hereof by reference. The Leased Premises are being accepted by Lessee in their “as-is” condition as the same exist on the Commencement Date hereof, and all necessary improvements thereto and equipment required therein shall be constructed or installed by Lessee at no cost or expense to the City, but subject to prior written approval of plans and specifications, not to be unreasonably withheld, therefore by the Aviation General Manager for the City. Such improvements shall be deemed to be a part of the Leased Premises hereunder.

Subsection 1.02 - Ingress and Egress. Lessee, its officers, directors, employees, patrons, customers, invitees, guests, and suppliers of materials or furnishers of services shall have the right of ingress to and egress from the Leased Premises, subject to such reasonable rules and regulations as may be established by other governing jurisdictions as respecting such use, and subject to law.

SECTION 2 - USE OF LEASED PREMISES:

The Leased Premises, and all improvements thereon, shall be used only for such uses and purposes as are a part of or incidental to the operation by Lessee of sustainability initiatives and support facilities, and ancillary uses (“Permitted Uses”). The Lessee reserves the right to use the Leased Premises for such support services during the Term (as such term is defined hereinafter). The use of the ATL Energy Park for sustainability initiatives is a Permitted Use. Any revenue received by Lessee for uses of the Leased Premises not authorized herein shall inure immediately and completely to the City. Lessee shall not do anything, or cause or permit anything to be done, in or about the Leased Premises, which will create a nuisance, or in any way obstruct or interfere with the rights of others, or injure or annoy them, or allow any sale by auction on the Leased Premises, or use or allow the Leased Premises to be used for any improper, immoral, or unlawful purpose, or any purpose which violates applicable rules or regulations issued by any governmental entity having jurisdiction over the Leased Premises, or obstruct the streets, roads or common passageways, in front of, within, or adjacent to the Leased Premises, or do or permit to be done anything in any way tending to injure the reputation of the City or the Airport.

Subsection 2.01 - Restrictions on Use of Leased Premises.

- (A) Improvements to Premises. All development, construction, and use of improvements on the Leased Premises shall be in accord with the applicable provisions of the Ground Lease, including but not limited to **Exhibit C**, and/or the “DOA Design Guidelines and/or Tenant Project Submittal Guidelines” for the Airport, the applicability of which will be determined by the City, a copy of which is on file in the Facilities Division of the Department of

Aviation and all applicable laws, rules and regulations of any governmental entity having jurisdiction over the Leased Premises.

- (B) Obstruction of Ingress & Egress. Lessee shall not obstruct ingress and egress to other facilities nor any utility easement at the Forest Parkway Tract in its use of the Leased Premises.
- (C) Parking/Storage Outside Leased Premises. Lessee shall not use any area outside of its Leased Premises for the purpose of parking or storing materials, vehicles, or equipment.

Subsection 2.02 - Hazardous Materials. The Lessee acknowledges that it has made itself fully aware of the existing conditions of the Leased Premises and conducted all testing, sampling and other reviews necessary in its sole judgment to assess the environmental conditions of the Leased Premises and after having done so, accepts the Leased Premises same "as-is". Except in strict compliance with all Environmental Laws and any other applicable requirements, Lessee shall not allow the entrance of Hazardous Materials, as defined below, from the Leased Premises into the sewage and storm water drainage system serving the Airport or any other surrounding jurisdictions. Other than those materials necessary for the operation of the Energy Park, Lessee shall not cause or permit any Hazardous Materials to be placed, held, stored, and processed on or at the Leased Premises. Lessee shall not release or otherwise dispose of any Hazardous Materials at the Leased Premises. Lessee hereby agrees to indemnify the City from and against any breach by Lessee of the obligations stated in the preceding sentences, and agrees to defend and hold the City harmless from and against any and all loss, damage, cost and/or expenses (including, without limitation, fines assessed against the Lessee, the City or others for whom the City may be responsible, damages for the loss or restriction on use of rentable or usable space or of any amenity on the Airport, damages arising from any adverse impact on marketing of space on the Airport, and sums paid in settlement of claims, attorneys' fees, consultants' fees, and expert fees) which arise during or after the Term as a result of such breach. This indemnification of the City by the Lessee also includes, without limitation, costs incurred in connection with any investigation of the site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water, during the Term of this Agreement, on the Leased Premises which results from such a breach. Without limiting the foregoing, if the presence of any Hazardous Material on the Leased Premises caused or permitted by the Lessee results in any contamination of the Leased Premises, the Lessee shall promptly take all actions at its sole expense as are necessary to return the Leased Premises (and any other affected property) to the condition existing prior to the introduction of such Hazardous Material to the Leased Premises; provided that the City's approval of such actions, and the contractors to be used by the Lessee in connection therewith, shall first be obtained.

Lessee shall operate and maintain the ATL Energy Park at the Leased Premises and shall manage any Hazardous Materials at the Leased Premises in strict compliance with all Environmental Laws and shall provide Landlord notice within ten (10) days of Lessee's receipt of

any verbal or written notice of: (1) any violation of Environmental Laws or (2) any release or disposal of Hazardous Materials at the Leased Premises. Lessee shall cure any breach of this Subsection immediately and, if applicable, in accordance with the terms hereof.

As used herein, the term "Applicable Law(s)" means all federal, state, municipal, City or local statutes, laws, ordinances, codes, rules, regulations, standards, executive orders, consent orders, orders and guidance from regulatory agencies, judicial decrees, permits, licenses or other governmental requirements of any kind, now in effect or that come into effect during the Term (and any present or future amendments to such Applicable Laws) that relate to: (i) the business of CITY; (ii) the business of Lessee; (iii) this Agreement; (iv) the Airport; or (v) any other matters relating to this Agreement.

As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is: (a) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" or similar term under any laws now or hereafter enacted by the United States or the State of Georgia or any political subdivision thereof, or (b) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1317) ("FWPCA"), or (c) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6911 *et seq.* (42 U.S.C. § 903) ("RCRA"), or (d) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* (42 U.S.C. § 9601) ("CERCLA") or (e) otherwise defined as a hazardous, toxic, or regulated substance under any Environmental Laws.

As used herein, the term "Environmental Laws" shall mean all federal, state and local statutes, laws, codes, rules, regulations, ordinances, orders, standards, permits, licenses or requirements (including consent decrees, judicial decisions and administrative orders), presently in force, as amended or re-authorized, pertaining to the protection, preservation, conservation, or regulation of the environment, or imposing requirements relating to public or employee health and safety, including, without limitation, the FWPCA, RCRA, CERCLA, the Emergency Planning and Community Right to Know Act, 42 U.S.C. s 11001 *et. seq.*, the Clean Air Act, 42 U.S.C. s 7401 *et seq.*, the Toxic Substance Control Act, 15 U.S.C. s 2601 *et seq.*, the Safe Drinking Water Act, 42 U.S.C. s 300F *et seq.* and the Occupational Safety and Health Act, 29 U.S.C. s 651 *et seq.*, each as amended or re-authorized.

The City and its employees, representatives and agents shall have access to the Leased Premises during reasonable hours and upon reasonable notice to the Lessee in order to conduct periodic environmental inspections and tests of Hazardous Material contamination on or at the Leased Premises. Such periodic environmental inspections shall not be performed in a manner which will disrupt the operations of the Lessee or any of its Subtenants.

Subsection 2.03 - Signs. Lessee is hereby granted the right to install identification and directional signs on and about the Leased Premises, subject to prior written approval by the Aviation General Manager, which approval shall not be unreasonably withheld, of their sizes, designs, texts, and locations and subject to the requirements and standards stipulated therefore in DOA Design Guidelines referred to in Subsection 2.01(A) above.

SECTION 3 - TERM:

Subsection 3.01 – Term. This Lease Agreement shall become effective on the Commencement Date. The Term of this Agreement (the “Term”) shall end, unless terminated earlier, thirty (30) years thereafter.

Subsection 3.02 – Right to Develop the Airport. It is covenanted and agreed that the City reserves the right to further develop or improve the Airport (the “Airport Expansion”) and all landing areas and taxiways as it may see fit, regardless of the desires or views of the Lessee and without interference or hindrance. If development or improvement of the Airport, landing areas or taxiways causes the requirement for use and mandates that the Lessee vacate the Leased Premises, the City shall have the right to terminate this Lease Agreement at any time during the Term by giving written notice to the Lessee at least One Hundred Eighty (180) days prior to the effective date of such termination.

Subsection 3.03 – Inspection Prior to Expiration of Term. A walk through inspection of the Leased Premises and the ATL Energy Park shall be made by the Aviation General Manager or his designee and a representative of the Lessee prior to the expiration of the Term hereof, for the purpose of noting deficiencies in the maintenance of the Leased Premises and the ATL Energy Park. The Lessee shall deliver, to the satisfaction of the City, within ten (10) days of the walk through a schedule detailing the time period during which any deficiencies shall be cured.

SECTION 4 - DESIGN AND CONSTRUCTION REQUIREMENTS:

Subsection 4.01 - Improvements, Equipment and Fixtures. Lessee shall commence and proceed with reasonable diligence to construct all necessary improvements and facilities, and to install all necessary equipment and fixtures, required to establish and operate the ATL Energy Park and shall comply with all federal, state, city and county regulations, laws, rules and ordinances and obtain all required permits and licenses required to construct the ATL Energy Park. The ATL Energy Park shall be constructed at no cost to the City.

Subsection 4.02 - Construction Schedule. Lessee shall complete construction of the ATL Energy Park so as to repurpose/reprocess/recycle ninety (90%) of the Municipal Solid Waste (MSW) generated from ATL and the City’s Department of Public Works and delivered to the ATL Energy Park by January 1, 2020, as in **Exhibit I**, attached hereto.

Subsection 4.03 - All Design and Construction Requiring City Approval. No exterior improvements, shall be erected or placed on the Leased Premises without prior written

approval from the City's Aviation General Manager, which approval shall not be unreasonably withheld, and no alterations shall be made to the ATL Energy Park, or to any other improvements or facilities constructed on the Leased Premises, without prior written approval by the City's Aviation General Manager or his designee, which approval shall not be unreasonably withheld. Any and all construction and or renovations by lessee during the term of this lease shall be accomplished in accordance with the terms and conditions of **Exhibit C - Design and Construction Requirements**, and/or the "DOA Design Guidelines and/or the Tenant Project Submittal Guidelines" for the Airport, the applicability of which will be determined by the City. The Design and Construction Requirements, DOA Design Guidelines, and Tenant Project Submittal Guidelines are hereby incorporated into the Lease Agreement.

The Lessee is required to comply with all federal, state, city and county regulations, laws, rules and ordinances and obtain all required permits and licenses required to make any and all improvements or alterations to the ATL Energy Park.

Subsection 4.04 - Removal and Demolition. Lessee shall not remove or demolish, in whole or in part, any leasehold improvements upon the Leased Premises without the prior written consent of the Aviation General Manager who may, in his discretion, condition such consent upon the obligation of Lessee to replace the same by an improvement specified in such consent, but the Aviation General Manager shall not withhold his consent unreasonably and shall not impose unreasonable conditions on his consent.

Subsection 4.05 – Payment and Performance Bonds. Lessee shall, at no expense to the City, cause to be made, executed, and delivered to the City in form and substance as shown in **Exhibit D**, hereto, or otherwise satisfactory to the City, insurance and corporate surety bonds guaranteeing the faithful performance and completion of the ATL Energy Park and the payment of wages for services engaged and of bills and materials supplied and equipment used in performance of the work on the ATL Energy Park.

SECTION 5 - RENT:

Lessee hereby covenants and agrees to pay to the City in lawful money of the United States of America without deduction or offset, at the City's principal place of business as identified in this Lease Agreement or at such place or places or to such person or persons as may be designated by the City, the following rental for the occupancy and use of the Leased Premises:

Subsection 5.01 – Rent. Lessee shall pay the City monthly rental payments in accordance with the negotiated rental matrix attached to this Lease Agreement as Appendix C. Throughout the term, the rental rates will be subject to further review and escalation to Fair Market Value (FMV) as per FAA concessions requirements. The lease rates will need to be reset following lease execution. At this time, the monthly rent for the unimproved land is \$6,800.00 per acre per year. The rental rate will be adjusted when the land, as improved by the successful Proponent, is re-appraised as required by the FAA. Respondents are advised that the existing

appraisal will be substantially out of date and that the lease rates will need to be reset at the time of lease execution. Within 4 to 6 months of the Commencement Date of lease execution the City will obtain a new appraisal to establish the Fair Market Value (FMV) and construct a matrix that:

5.01.1 Outlines annual escalations over the term;

5.01.2 Defers rental obligations during the construction period; and

5.01.3 Outlines the annual requirement over the term beyond the deferral period to collect the deferred rent.

The matrix will serve as the basis for rental terms and conditions negotiations between the City and the successful Respondent. Upon completion of negotiations the rental matrix will be added to the Ground Lease as Appendix C. Appendix C may be updated and replaced as necessary during the term of the Ground Lease Agreement.

The ATL Energy Park must remain a “cutting edge” facility. During the term of this Lease Agreement, Lessee is required to implement processes, methodologies, and infrastructure which will keep the ATL Energy Park at the fore-front of sustainable facilities.

Subsection 5.02 – Timing of Rent Payments. Rent is payable in advance and shall be due on the first day of each month. Rent payments not received by the tenth (10th) day of each month shall be subject to a late payment penalty of ten percent (10%) per month, or portion thereof.

Subsection 5.03 – Treatment of Lease Payments for Income Tax Purposes. Lessee shall treat its payments under this Lease Agreement as lease payments for federal income tax purposes and shall not treat such payments as repayments of a loan or an installment sale for federal income tax purposes. However, if after the execution and delivery of this Lease Agreement, the pertinent federal income tax laws or regulations adopted thereunder are changed so as to require that payments hereunder be treated as repayments of a loan or as payments under an installment sale or otherwise, Lessee in complying with such change or changes shall not thereby breach this Lease Agreement nor be held in default, but it shall immediately notify the City of any such change in the treatment of said payments.

SECTION 6 - COMPLIANCE WITH LAWS AND REGULATIONS:

Lessee shall not at any time during the term hereof:

- (A) Omit or fail to procure at the appropriate time any permit or license necessary for any activities or operations on the Leased Premises, and shall not omit or fail to pay, before delinquent, any cost, charge or expense of any kind or nature required to be paid by Lessee under this Lease Agreement; or

- (B) Omit or fail to do anything or do or permit anything to be done on or about the Leased Premises, or bring or keep anything on the Leased Premises or in any improvement or facility erected thereon, which will in any way conflict with any law, ordinance, rule or regulation required to be kept and observed by the Lessee which is now in force or which may hereinafter be enacted or promulgated by any public authority having jurisdiction over the Leased Premises; or create or suffer to be created a nuisance, or commit or suffer to be committed any waste in or upon the Leased Premises; or
- (C) Use or allow the Leased Premises to be used for any immoral or unlawful purposes; or
- (D) Commit or suffer to be committed in or on the Leased Premises any other act or thing which may unreasonably disturb the quiet enjoyment of any other tenant at the Airport or surrounding private property and/or individual(s) in or around the Forest Park tract.

Subsection 6.01 - Airport Rules and Regulations. The occupancy and use by Lessee of the Leased Premises and the rights herein conferred upon Lessee shall be subject to such reasonable Airport rules and regulations as are now or may hereafter be prescribed by the City through the lawful exercise of its powers; provided, however, that no such rule or regulation shall be of such nature as to interfere with or constitute any derogation of or infringement upon the rights and privileges herein granted to Lessee.

SECTION 7 - RESPONSIBILITY FOR OPERATION AND MAINTENANCE OF THE LEASED PREMISES.

Subsection 7.01 - General. The Lessee shall be responsible for performance of all operation and maintenance of the ATL Energy Park including any and all repairs in the Leased Premises and all improvements in accordance with the provisions of this Section and **Exhibit F**, and the cost shall be paid by Lessee. All work shall be accomplished by Lessee without cost or expense to the City.

Subsection 7.02 - Lessee's Responsibility.

(A) Lessee shall, throughout the Term of this Lease Agreement and without cost or expense to the City, keep and maintain the Leased Premises and all improvements, landscaping, fixtures, and equipment, which may now or hereafter exist thereon, in good and sanitary order and repair and in good, safe, and presentable condition, consistent with generally accepted business practices. If after thirty (30) calendar days written notice from the City, Lessee fails to maintain or repair the Leased Premises or the improvements thereon, then the City may, but shall not be obligated to, enter upon the Leased Premises and perform such maintenance or repair, and Lessee shall pay the cost thereof to the City upon demand; provided, however, that if such items cannot be repaired within said thirty-day period, then Lessee shall not be in default and the City may not exercise its option herein if Lessee has commenced repairs within

said thirty-day period and diligently pursues same to completion. Any unpaid amounts under this Section shall bear interest at the rate of 10% per annum until paid in full.

(B) Lessee shall pay for any and all capital improvements at or on the Leased Premises.

SECTION 8 - ABANDONMENT:

(A) Lessee shall not vacate nor abandon the Leased Premises at any time during the Term hereof; and, if the Lessee shall abandon, vacate, or surrender the Leased Premises or be dispossessed by operation of law or otherwise, all of Lessee's improvements on the Leased Premises shall become the property of the City. In such event, any personal property belonging to Lessee and left upon the Leased Premises shall, at the option of the City, be deemed to be abandoned by Lessee and shall, at the option of the City, become the property of the City.

(B) Notwithstanding the preceding Paragraph (A), if the Lessee in its sole judgment determines that market conditions are such that use of the Leased Premises is impracticable and it is anticipated that no activity will occur on or about the Leased Premises for a period of between thirty (30) and three hundred and sixty (365) days, the Lessee shall notify the City's Aviation General Manager of such fact and the estimated duration of such condition and City may not take ownership of Lessee's property per the provisions of Paragraph (A). Provided, however, that nothing contained in this Section shall be construed to release the Lessee from its obligations under any section hereof, including particularly Section Titled (Rental), Section Titled (Compliance with Laws and Regulations), Section Titled (Responsibility for Maintenance of Leased Premises), Section Titled (Taxes), Section Titled (Trash and Refuse) and Section Titled (Hold Harmless Agreement and Insurance).

(C) In addition, should the Lessee fail to accept, for a period exceed seventy two (72) business hours, all Municipal Solid Waste (MSW) generated from ATL or the Department of Public Works (DPW) and delivered to the ATL Energy Park following Beneficial Occupancy, the Lessee may be subject to liquidated damages as detailed in Exhibit I, Milestones and Liquidated Damages.

SECTION 9 - LIENS:

Lessee shall keep the Leased Premises and all improvements thereon free from any and all liens arising out of any work performed, materials furnished or obligations incurred by Lessee, Lessee's employees, agents, or contractors.

SECTION 10 - TAXES:

During the Term hereof, Lessee shall pay or cause to be paid, prior to delinquency, any lawful taxes, and any assessments levied or assessed: (a) on the Leased Premises, (b) on all property interests hereunder or in the Leased Premises, and (c) on any improvements, fixtures,

and equipment now or hereafter existing on the Leased Premises and on any personal property on, in or about any buildings or improvements therein. It is understood, however, that Lessee may pay any such taxes and assessments under protest, and, without liability, cost or expense to the City, may, in good faith, contest the validity or amount thereof. On or before the Effective Date, the Lessee shall provide written notification to the City and each taxing body with jurisdiction over the Leased Premises of the Lessee's interest and the Term of this Lease Agreement.

SECTION 11 - UTILITIES:

Subsection 11.01 - Utility Services. Lessee shall, at its cost and expense, arrange for delivery of any and all utilities to the Leased Premises, including, but not limited to, electrical, gas, telephone, sewer and water lines and storm drainage; Lessee shall thereafter maintain, or cause to be maintained, all such utilities on the Property, including the points of connection.

Subsection 11.02 - Waiver of Damages. Lessee hereby expressly waives and releases the City from any and all claims for damages arising or resulting from failures or interruptions of utility services furnished by the City or others, including but not limited to electricity, gas, water, plumbing, sewage, telephone, or communications. In any event, the City shall restore promptly any of such services which are provided by the City when the cause of the interruption has been removed.

Subsection 11.03 - Utility Charges. All charges for utility services to the Leased Premises shall be paid by Lessee promptly when due. Lessee shall take all necessary steps to promptly and properly challenge any disputed utility charges and to resolve any such disputes in a timely manner and shall promptly discharge any liens that arise as the result of unpaid utility charges, as provided in Section 9. In no event shall the City be liable for any utility charges attributable to the Leased Premises during the Term or otherwise arising from the use or occupation of the Leased Premises by Lessee or Lessee's assignees or subtenants.

SECTION 12 - TRASH AND REFUSE:

Subsection 12.01 - Removal and Disposal. It is hereby expressly stipulated that the quick and efficient removal or treatment of trash, clippings, refuse, garbage and other debris on-site in accordance with approved processes and disposal of trash, clippings, refuse, garbage, and other debris from the Leased Premises is essential, and Lessee shall arrange for such removal and disposal of same at Lessee's cost and at no cost or expense to the City and in accordance with applicable laws and ordinances.

Subsection 12.02 - Storage Containers. For any and all material, whether generated internally or externally not be reprocessed or recycled, such material shall be stored in closed containers suitably screened and protected from public view, pending their removal and disposal, and such storage shall not generate odors, attract rodents or insects, or become offensive in any manner. The storage area shall be kept neat and clean at all times.

Subsection 12.03 - Deleterious Wastes. Lessee shall prevent the entrance of objectionable quantities of petroleum products and other deleterious wastes into the sewage and storm water drainage systems serving the Leased Premises or other surrounding jurisdictions, unless the same shall first be treated in accordance with and in full compliance with all applicable laws, regulations, and procedures of Federal, State, County, and City authorities having jurisdiction with respect to such matters. In the event that the City is required by any federal or state agency having jurisdiction in such matters, to pay a fine or other penalty due to the failure of Lessee to comply with this Subsection, then in such event Lessee shall reimburse the City the full amount of such fine or penalty promptly upon receipt of invoice therefore from the City.

SECTION 13 - HOLD HARMLESS AGREEMENT AND INSURANCE:

Subsection 13.01 - Indemnification. It is an express condition of this Lease Agreement that, except where caused by the sole negligence or willful misconduct of the City, its elected officials, officers, agent and or employees shall be free from any and all claims, debts, demands, liabilities, or causes of action of every kind or character, whether in law or in equity, by reason of any death, injury, or damage to any person or persons or damage or destruction of property of Lessee, its employees, or agents, or of any third persons, caused by the act or omission of Lessee, its employees or agents, or of any third persons (including trespassers) while on or about the Leased Premises or any part thereof during the term of this Lease Agreement; and arising out of or resulting from any negligent acts, negligent omissions or willfull misconduct of Lessee, its employees or agents or subtenants and/or subcontractors in connection with this Lease Agreement, and Lessee shall defend, indemnify and save harmless the City, its elected officials and its officers, agents, and employees from and against any and all such claims, debts, demands, liabilities, and causes of action (including reasonable attorneys' fees and costs). Lessee further agrees that this agreement to indemnify and hold harmless the City, its officials, agents, and employees shall not be limited to the limits or terms of the liability insurance coverage's required herein below.

Subsection 13.02 - Insurance. Lessee shall procure and maintain, in effect throughout the duration of this Lease Agreement, insurance coverage as set forth in **Exhibit D**.

SECTION 14 - DAMAGE OR DESTRUCTION OF THE LEASED PREMISES, ENERGY PARK OR OTHER IMPROVEMENTS:

Subsection 14.01 - Damage to the Leased Premises or Other Improvements. In the event that any part of the Leased Premises, ATL Energy Park, or other improvements on the Leased Premises, is so damaged by fire or other cause as to make such part untenable or practically unusable for the purposes provided for hereunder, or if any part of the ATL Energy Park, or other improvements on the Leased Premises is rendered practically unusable for the purpose for which it was formerly used because of damage to other portions of the Leased Premises or improvements, then Lessee shall repair any such damage as expeditiously as possible and without cost to the City and make every temporary provision as reasonably practical to continue to operate any such part of Leased Premises or improvement as fully as possible

during the period of reconstruction, and Lessee's obligation to pay rent hereunder shall not be affected.

Subsection 14.02 - Partial Damage to the Leased Premises or Other Improvements. In the event that any part of the Leased Premises, ATL Energy Park, or other improvements on the Leased Premises, is partially damaged by fire or other cause so as to require repair even though it is tenantable or practically useable for the purpose for which it was formerly used, Lessee shall repair any such damage as expeditiously as possible and without cost to the City.

SECTION 15 - INSPECTION OF THE LEASED PREMISES:

The City or its duly Authorized Representative may enter upon the Leased Premises, the ATL Energy Park, and any other improvements on the Leased Premises at all reasonable times, upon not less than twenty-four (24) hours' notice to Lessee, during the Term hereof for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof or for any other purpose incidental to the rights of the City. No prior notice shall be required in the event of an emergency threatening the public health, safety or welfare, provided the appropriate governmental agency or agencies are responding to such a threat.

SECTION 16 - TITLE:

At the completion of the Term of this Lease Agreement, Title to the ATL Energy Park and any and all other improvements on the Leased Premises shall pass to and be vested in the City.

SECTION 17 - EVENTS OF DEFAULT BY THE LESSEE:

Each of the following events shall constitute an "event of default" by Lessee; provided, however, that Lessee shall have not less than thirty (30) days (except in the case of subparagraph (d), sixty (60) days) after receipt of written notice from the City of any such event of default by Lessee to cure or obviate same:

- (a) Lessee (a) violates the Applicable Law(s), Federal Aviation Administration or Environmental Protection Agency regulation(s), or (b) fails to pay the rent herein provided at the time herein fixed for the payment thereof.
- (b) Lessee's failure to pay any lawful tax or assessments agreed to be paid by the Lessee in Section 10 of this Lease Agreement in accordance with the terms of said Section.
- (c) Lessee's failure to keep, perform, or observe any term, covenant, or condition of this Lease Agreement agreed to be kept, performed, or observed by Lessee.
- (d) Lessee's filing of a voluntary petition in bankruptcy or the assignment of all or substantially all of the Lessee's assets for the benefit of Lessee's creditors or the institution of proceedings in bankruptcy against Lessee or the appointment of a

receiver of the assets of Lessee; provided, however, that if such proceedings or appointments are involuntary, then they shall not be considered an event of default by Lessee unless Lessee fails to procure a dismissal thereof or is diligently pursuing such dismissal thereof within sixty (60) days after institution of such involuntary bankruptcy proceedings or appointment of such receiver.

SECTION 18 - TERMINATION BY CITY:

Subsection 18.01 - Termination by the City. City may terminate for convenience the Ground Lease in whole or in part, from time to time, or at any time by written Notice to Lessee. Such Notice shall specify the extent to which the Ground Lease is terminated and the effective date of such termination.

Subsection 18.02 - Other Rights and Remedies of the City. If any one or more of the events of default shall happen, then the City shall have the right to terminate this Lease Agreement by giving at least thirty (30) days prior written notice to Lessee of the date such termination is to be effective, specifying in such notice the exact event of default which gives rise to such action. Upon receipt of such notice, Lessee shall:

- (a) Immediately discontinue the Work on the date and to the extent specified in the notice and place no further purchase orders or subcontracts for materials, services, or facilities, other than as may be required for completion of such portion of the Work that is not terminated.
- (b) Promptly obtain assignment or cancellation upon terms satisfactory to City of all purchase orders, subcontracts, rentals, or any other agreements existing for the performance of the terminated work or assign those agreements as directed by City;
- (c) Assist City in the maintenance, protection, and disposition of work in progress, plant, tools, equipment, property, and materials acquired by Lessee or furnished by City under this Lease Agreement and;
- (d) Complete performance of such portion of the Work which is not terminated in accordance with the scheduled milestones and Lease Agreement completion dates.

Subsection 18.03 - Upon the failure of Lessee to cure or obviate an event of default by Lessee within the time periods specified hereinabove, the City shall have, in addition to the rights or remedies set forth hereinabove, the immediate right of re-entry and may remove all persons and property from the Leased Premises and store the property in a public warehouse or elsewhere at the cost of and for the account of Lessee. Should City elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided by law, it may either terminate this Lease Agreement or relet the Leased Premises or any part thereof and any improvements thereon, without terminating this Lease Agreement,

for such term or terms (which may be for a term extending beyond the term of this Lease Agreement) and at such rental or rentals and upon such other terms and conditions as the City, in its sole discretion, may deem advisable, with the right to make alterations or repairs to the improvements or to the Leased Premises. Upon such reletting, the City shall have the following options:

- (a) Lessee may be required to pay the City, in addition to any other amounts payable hereunder other than rent, the reasonable cost and expense of such reletting and of such alterations or repairs due to Lessee's fault or negligence incurred by the City, and the amounts (if any) by which the rent reserved in this Lease Agreement for the period of such reletting (up to but not beyond the Term of this Lease Agreement) exceeds the amount agreed to be paid as rent for the Leased Premises during the period of such reletting; or
- (b) the rent received by the City from such reletting may be applied, first, to the payment of any other amounts payable hereunder other than rent from Lessee to the City, second, to the payment of any reasonable costs and expenses of such reletting and of such alterations and repairs, third, to the payment of rent due and unpaid hereunder, and the residue (if any) shall be held by the City and applied to the payment of future rent as the same may become due and payable hereunder. If Lessee is ever credited with any rent in excess of the rent received by the City from such reletting under option (a), then Lessee shall promptly refund such excess to the City. If the rental due the City under such reletting under option (b) is ever less than that due the City from Lessee hereunder, then Lessee shall promptly pay any such deficiency to the City. Such deficiency shall be calculated and paid monthly.

No such re-entry or taking possession of the Leased Premises and any improvements thereon by the City shall be construed as an election on its part to terminate this Lease Agreement unless a written notice of such intention shall have been given to Lessee. Notwithstanding any such reletting without termination, the City may elect at any time thereafter to terminate this Lease Agreement for any breach, in addition to any other remedy it may have, and in such event, Lessee's interest in any and all leasehold improvements on the Leased Premises shall, at the option of the City, automatically pass to the City; and the City may recover from Lessee all damages it may incur by reason of such breach.

Subsection 18.04 - Suspension Notice. City may, by written notice to Lessee, suspend at any time the performance of all, or any portion, of the Work to be performed under this Ground Lease. Upon receipt of such notice, Lessee shall, unless the notice requires otherwise;

- (a) Immediately discontinue work on the date and to the extent specified in the notice;

- (b) Place no further orders or subcontracts for material, services, or facilities with respect to suspended work other than to the extent required in the notice;
- (c) Promptly make every reasonable effort to obtain suspension upon terms satisfactory to City of all orders, subcontracts, and rental agreements to the extent such relate to performance of suspended work;
- (d) Continue to protect and maintain the Work, including those portions on which work has been suspended; and
- (e) Take any other reasonable steps to minimize costs associated with such suspensions.

Subsection 18.05 - Notice to Resume. Upon receipt of notice to resume suspended work, Lessee shall immediately resume performance under this Ground Lease to the extent required in the notice.

SECTION 19 - TERMINATION BY CITY OR LESSEE:

Either party may cancel this Lease Agreement at any time if:

- (a) The Federal Aviation Administration or other proper Federal Agency shall withdraw its approval from the Airport and restrict the use of the Airport in such a manner as to interfere with Lessee's business operations.
- (b) An order is issued by any Court of competent jurisdiction restricting the use of the Airport in such a manner as to interfere with Lessee's business operations.
- (c) The City fails to keep or observe any term, covenant, or condition of this Agreement agreed to be kept, observed or performed by the City after receipt of written notice thereof from Lessee describing such failure in particular detail and the City fails to cure same within sixty (60) days thereafter, in which event, Lessee may exercise any remedy it may have; provided, however, that if such default cannot be cured within such sixty (60) day period, and the City commences to cure same within such period and diligently pursues same to completion, such default shall be deemed to have been cured within such period.

SECTION 20 - RIGHTS UPON TERMINATION:

If Lessee is not in default hereunder, Lessee shall have the right to remove during the Term hereof and for sixty (60) days thereafter any and all trade fixtures which Lessee may have placed upon the Leased Premises; provided, however, that upon said removal, Lessee shall repair, at Lessee's own expense, any damage resulting therefrom and leave the Leased Premises in a clean and neat condition.

SECTION 21 - Claims, Counterclaims, Disputes:

Subsection 21.01 - Claims, Counterclaims, Disputes.

- (A) All claims, counterclaims, disputes and any other matters in question that may be asserted or raised by Lessee under, or relating to, the Lease Agreement or the breach of it shall be processed in accordance with the provisions of this Section (the "Claim/Dispute Resolution Procedures") and are subject to audit by the City.
- (B) Lessee shall not be entitled to any damages, and neither the City nor its designated representatives shall be liable to Lessee or its employees or agents, subtenants and/or subcontractors in tort (including without limitation negligence) or contract, except as specifically provided in the Lease Agreement.

Subsection 21.02 - When Notice and Claim Submittal Become Due. For any Claim under these Claim/Dispute Resolution Procedures to be valid, it shall be based upon written notice promptly delivered by Lessee to the City, but in no event later than seven (7) days after the occurrence of the event giving rise to the Claim, and stating the general nature of the Claim. The responsibility to substantiate a Claim shall rest with the Lessee.

Subsection 21.03 - Requirements for Contractor Claims.

- A) For all Lessee Claims seeking damages, or any change to any Ground Lease Requirement/Milestone, Lessee shall submit with the Claim an affidavit certifying that:
 - 1) The Claim is made in good faith, damages or the Ground Lease Requirement/Milestone for which the Lessee believes the City is liable, and covers all direct, supplemental, indirect, consequential, serial and cumulative costs and delays to which Lessee is entitled as a result of the occurrence of the claimed event;
 - 2) The supporting data are current, accurate, complete and represent the best of Lessee's knowledge and belief; and
 - 3) The affidavit shall be executed by a senior officer of Lessee.

The attention of Lessee is drawn to state and federal laws regarding penalties for false claims. The City will prosecute Lessee to the fullest extent of the law for the submission of a false, fictitious or unsubstantiated Claim.

A Claim for an adjustment to any Ground Lease Requirement/Milestone shall be supported by an analysis of the Project Plan detailing the impact of the event giving rise to the Claim.

Subsection 21.04 - Determination on a Claim:

- A) If Lessee and City cannot resolve any claim or dispute, Lessee agrees to participate in good faith in non-binding Mediation if requested by the City. The cost of Mediation will be split equally between Lessee and City. If a resolution cannot be reached through mediation the Lessee's sole appeal of the City's Final Determination is to institute legal action in Fulton Superior Court within sixty (60) days after Final Determination.

Subsection 21.05 - Disputes:

- 1.1. Any Claim that is denied by the City shall be considered a dispute for purposes of these Claim/Dispute Resolution Procedures.
- 1.2. Pending final resolution of any Claim or dispute, including litigation, Lessee shall proceed diligently with performance of the Ground Lease, and comply with any decision of the City.
- 1.3. In the event the City is a prevailing party in any litigation brought under or to enforce the provisions of the Lease Agreement, Lessee shall pay to the City all of the City's costs, expenses and fees associated with the litigation and the preparation thereof, including, but not limited, to reasonable attorneys' fees, expert witness fees, and all expenses incurred. Lessee shall pay the City's reasonable attorneys' fees and other costs whether the services are performed by the City's employees or by independent counsel.

Subsection 21.06 - Failure to Follow Procedures. The City must receive written notice of all Claims and disputes in strict compliance with these Claim/Dispute Resolution Procedures and the notice provisions contained in the Lease Agreement in order to investigate such Claims and disputes and to make decisions that will eliminate or minimize any additional costs or delays to the Ground Lease, the Project or to the City's overall airport expansion program. Lessee acknowledges that it has no right in law or equity to seek any increase to the Fees or a change to a Milestone, unless Lessee strictly complies with all requirements of, and times set forth in, these Claim/Dispute Resolution Procedures. Failure by Lessee to meet all of the requirements of and times in these Claim/Dispute Resolution Procedures shall be deemed an intentional waiver by Lessee of any right to file a lawsuit seeking redress of any type. Compliance with all the requirements of and times in these Claim/Dispute Resolution Procedures is an absolute condition precedent to Lessee having the right to file a lawsuit seeking redress of any type. In the event of non-compliance by Lessee, the City is entitled to have any lawsuit dismissed with prejudice by showing that Lessee did not strictly comply with all of the requirements of these Claim/Dispute Resolution Procedures.

Subsection 21.07 - Venue. Lessee acknowledges and agrees that the exclusive jurisdiction and venue for any legal action or proceeding, at law or in equity, arising out of or relating to the Lease shall be in the Federal District Court for the Northern District of Georgia or the State Courts in Fulton County, Georgia. Lessee hereby consents and submits to the exclusive personal jurisdiction of such courts, and consents, submits to and agrees that venue for such a legal action or proceeding is proper in said courts and county, regardless of Lessee's domicile. Lessee hereby expressly waives all rights under applicable law or in equity to object to the jurisdiction and venue in said courts and county with respect to such legal action or proceeding.

SECTION 22 - NON-WAIVER OF DEFAULTS:

The waiver by either party of any breach by the other party hereto of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition of this Lease Agreement. No term, covenant, or condition hereof can be waived except by written consent of the City or Lessee; and forbearance or indulgence by the City or Lessee, in any regard whatsoever, shall not constitute a waiver of the term, covenant, condition to be performed by the City or Lessee to which the same may apply; and until complete performance by the City or Lessee of the term, covenant, or condition, the City or Lessee shall be entitled to invoke any remedy available to it hereunder by law, despite such forbearance or indulgence.

SECTION 23 - LESSEE'S ENCUMBRANCES:

Lessee shall not encumber Lessee's interest in the Leased Premises or any improvements Lessee places thereon by mortgage, deed of trust, or other instrument without prior written consent of the Aviation General Manager, which consent shall not be unreasonably withheld and shall be delivered within thirty (30) days of request by Lessee.

SECTION 24 - HOLDING OVER:

Should Lessee hold over said Leased Premises after this Lease Agreement has terminated in any manner, during such holding over Lessee shall be deemed merely a tenant at sufferance at a rental rate to be fixed by the City, payable in advance, but otherwise on the same terms and conditions as herein provided. Notwithstanding anything herein to the contrary, the rental rate to be fixed by the City under this Section shall not exceed 125% of the market rate of comparable commercial property located in and about the Leased Premises at the time of the expiration or earlier termination of this Lease Agreement.

SECTION 25 - REDELIVERY OF PREMISES:

Lessee shall, upon expiration or termination of this Lease Agreement in any manner, quit and deliver up the Leased Premises and all improvements thereon to the City peaceably, quietly, and in as good order and condition as the same now are or may be hereafter improved

by Lessee or the City, reasonable wear and tear thereof excepted. Lessee shall have the right to remove trade fixtures and personal property, but not leasehold improvements.

SECTION 26 - QUIET ENJOYMENT:

Lessee, upon payment of the rentals and all other charges to be paid by Lessee under the terms of this Lease Agreement and upon observing and keeping all of the covenants, terms, and provisions of this Lease Agreement on the part of Lessee to be observed and kept, shall lawfully and quietly hold, occupy, and enjoy the use of the Leased Premises during the term of this Lease Agreement. City warrants that it holds sufficient title to the Forest Parkway Tract to permit the City to perform its obligations hereunder.

SECTION 27 - LIMITATIONS ON ASSIGNMENT, TRANSFER, AND SUBLETTING:

Lessee shall not sell, assign, or transfer this Lease Agreement without the prior written consent of the City's Aviation General Manager, which shall not be unreasonably withheld. Lessee shall not sublease the Leased Premises or any portion thereof or improvements thereon or any privilege granted with respect to the operation of the Leased Premises or any portion thereof or improvements thereon, without the prior written consent of the City's Aviation General Manager. No assignee for the benefit of Lessee's creditors, and no trustee, receiver or referee in bankruptcy shall acquire any rights under this Lease Agreement by virtue of this Section. Lessee acknowledges that such approval may also require the consent of the FAA, to the extent required by applicable Law or regulations.

The identity of any assignee and the terms and conditions of any assignment shall be subject to the City's prior written approval. The City's consent to the form of any such contract, together with any material modifications of such contract, shall not be unreasonably withheld, conditioned or delayed, provided such contract is consistent with the provisions of this Agreement, and that the term does not extend beyond the Term of this Agreement.

SECTION 28 - WAIVERS:

No waiver by either party hereto at any time of any of the terms, conditions, covenants, or provisions of this Lease Agreement, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant, or provision herein contained, nor of the strict and prompt performance thereof by either party. No delay, failure, or omission of the City to re-enter the Leased Premises or to exercise any right, power, privilege, option, or remedy arising from any default, and no subsequent acceptance of rentals then or thereafter accrued, shall impair any such right, power, privilege, option, or remedy, or be construed to be a waiver of any default or acquiescence therein. No right, power, privilege, option, or remedy of either party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is expressly stipulated that each and all of the rights, powers, privileges, options, or remedies given to the City or Lessee by this Lease Agreement are cumulative and no one of them shall be exclusive of the others or

exclusive of any remedies provided by law, and that the exercise of one right, power, privilege, option, or remedy by the City or Lessee shall not impair the right to exercise any other right, power, privilege, option, or remedy.

SECTION 29 - AGENT FOR SERVICE OF PROCESS:

If Lessee is not a resident of the State of Georgia, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, then in any such event Lessee shall register with the Secretary of State of the State of Georgia, as a foreign corporation, and Lessee hereby designates

Name: XXXXXXXX
 XXXXXXXXXXXXXXXX
 XXXXXXXXXXXXXXXX

as its agent for the purpose of accepting service of process issued by any court in the State of Georgia for any breach or default of the terms, conditions, covenants, or provisions of this Lease Agreement, and service shall be made as provided by the laws of the State of Georgia for service upon a nonresident. It is further expressly agreed, covenanted, and stipulated that if for any reason such service of process is not possible, and as an alternative method of service of process, then Lessee may be personally served with such process out of the State of Georgia by the registered mailing of such Complaint and process to the Lessee at the address set out hereafter in this Lease Agreement, and that such service shall constitute valid service upon Lessee as of the date of mailing, and Lessee shall have thirty (30) days from the date of mailing to respond thereto. It is further expressly agreed that Lessee is amenable to the process so served, submits to the jurisdiction, and waives any and all obligations and protest, any laws to the contrary notwithstanding.

SECTION 30 - WAIVER OF CLAIMS:

Lessee hereby waives any claims against the City and its elected officials, officers, agents, or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Lease Agreement or any part hereof, or by any judgment or award in any suit or proceedings declaring this Lease Agreement null, void, voidable, or delaying the same, or any part hereof, from being carried out; provided, however, that such waiver shall not apply to any claims arising out of condemnation, eminent domain, or similar government action.

SECTION 31 – SAFETY AND SECURITY ARRANGEMENTS:

Lessee shall be totally responsible for safety and security of the Energy Park, the Lessee's employees, the general public, vendors and tenants. Lessee shall be responsible for initiating, maintaining and supervising all safety and security precautions required in connection with the Energy Park in accordance with applicable Laws. Notwithstanding the foregoing,

Lessee shall to the extent practicable comply with the City's safety and health plan requirements attached to this lease Agreement as **Exhibit H**, the Occupational Safety and Health Administration (OSHA) and other governing agencies, and ensure all employees are aware of and comply with the City's Security requirements attached to this lease agreement as **Exhibit G**.

The Lessee shall report promptly in writing to the Authorized Representative accidents in connection with the operation and maintenance of the Energy Park which results in death, any injury requiring medical treatment other than first aid administered at the Energy Park, or property damage, giving full details and statements of witnesses.

SECTION 32 - PUBLIC USE AND FEDERAL GRANTS:

Subsection 32.01 – Grant Agreements The Leased Premises and the Airport are subject to the terms of those certain sponsor's assurances made to guarantee the public use of the Airport as incidental to grant agreements between the City and the United States of America, as amended, and the City represents that none of the provisions of this Lease Agreement violate any of the provisions of the Sponsor's Assurances in the various Grant Agreements.

Subsection 32.02 - Non-Exclusive Rights. Nothing contained in this Lease Agreement shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

Subsection 32.03 - Right to Develop the Airport. The City hereby reserves the right, but has no obligation, to further develop and improve the Airport and all roadways, parking areas, terminal facilities, landing areas, and Taxi-lanes, as it may deem reasonably necessary and desirable in order to serve the best interests of the City and the traveling public; provided, however, nothing herein contained shall be construed as a waiver of any right or privilege granted to Lessee by the City hereunder or in any other agreement in effect between Lessee and the City, and provided further that such development or improvements shall not unreasonably interfere with or affect Lessee's use or occupancy of the Leased Premises.

Subsection 32.04 - Subordination of Lease. This Lease Agreement shall be subordinate to the provisions of any existing or future agreement between the City and the United States of America, its boards, agencies, or commissions relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds on the development of the Airport or operation of facilities thereon.

Subsection 32.05 - Federal Non-Discrimination Covenant. Lessee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination in the use of the Leased Premises or the facilities thereon, (2) that, in the

construction of any improvements on, over, or under the land comprising the Leased Premises and the furnishing of services thereon, no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended, and (4) that, in the event of breach of any of the above discrimination covenants, the City shall have the right to terminate this Lease Agreement and to re-enter and repossess said land, the facilities thereon, and hold the same as if this Lease Agreement had never been made or issued. Provision (4) shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

Subsection 32.06 - Right to Amend. In the event that the Federal Aviation Administration or its successors shall require any modifications or changes in this Lease Agreement as a condition precedent to the granting of funds for the improvement of the Airport, Lessee hereby consents to such amendments, modifications, revisions or supplements or deletions of any of the terms, conditions, or requirements of this Lease Agreement as may reasonably be required to obtain such funds; provided, however, that in no event shall Lessee be required, pursuant to this provision, to accept an increase in the rent or fees provided for hereunder or to accept a change in the use or to accept a reduction in the size of the Leased Premises, or to accept any change which would adversely affect the rights of Lessee's tenant occupying the Leased Premises, Lessee's lender, mortgagee, beneficiary, payee, or any trustee registered with the City.

SECTION 33 - CERTIFICATION OF NON-DISCRIMINATION COVENANT:

By execution of this Lease Agreement, Lessee certifies as follows:

Lessee certifies, to the extent applicable, as follows: "We the supplier of goods, materials, equipment or services covered by this Ground Lease will not discriminate in any way in connection with this Ground Lease in the employment of any person, or refuse to continue the employment of any person, on account of race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, or disability, or political affiliation of such person."

SECTION 34 - NOTICES:

All notices to be given hereunder shall be in writing and shall be deemed to have been given when deposited in the United States mail, postage prepaid, certified or registered, addressed as follows (or to such other address as from time to time may be designated by either party by written notice to the other party):

(A) City: City of Atlanta
Department of Aviation
P.O. Box 20509
6000 N. Terminal Parkway
Atrium Suite 4000
Hartsfield International Airport
Atlanta, GA 30320
ATTN:

(B) Lessee: XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

SECTION 35 - PERSONNEL REQUIREMENTS:

(A) Personnel. Lessee shall provide adequate staff for the performance of the Ground Lease Agreement to be performed by Lessee pursuant to this Lease Agreement, as determined from time to time by Lessee in its reasonable discretion. Should Lessee desire to replace or add personnel to Lessee's staff, the selection of such personnel shall be subject to the reasonable approval of CITY. Lessee shall select employees who are competent and who have been properly trained and have sufficient expertise to provide the services required under this Ground Lease. In the event CITY deems any of the personnel to be incompetent, careless, or otherwise objectionable, it shall advise Lessee of same and Lessee shall either replace the individual or take whatever steps are necessary to remedy the situation to CITY's satisfaction. Lessee shall be solely responsible for the payment of all wages, salaries, benefits, if any, and other amounts due to its personnel and shall be responsible for the payment of all federal, state and local employment taxes and all other obligations pertaining to the employment of the personnel, including but not limited to social security, income tax withholding, workers' compensation, unemployment, and any applicable group insurance coverage.

(B) Project Manager. Lessee has appointed and shall maintain, during the Term, a "Project Manager," identified as _____, who shall reside during Lessee's performance of its Sustainability Initiative-related obligations in the metropolitan Atlanta area, and who shall: (i) be fully familiar with all aspects of the Work, the Services and the Deliverables; (ii) have full authority to make day-to-day decisions on behalf of and to bind Lessee during the progress of the Project and shall have full control of the Lessee's personnel involved in provision of the Deliverables and Work; (iii) ensure Lessee's compliance with its obligations under this Lease Agreement; (iv) maintain close cooperation with CITY; and (v) regularly be at and readily be able to come to the Jobsite during the Project or attend meetings with CITY. Lessee shall not voluntarily remove the Project Manager from his or her position with respect to the Project without CITY's prior written approval, except in cases where Lessee reasonably and in good

faith concludes that the Project Manager has failed to or is unwilling or unable to perform his or her Project-related duties in an effective manner.

(C) Removal Right. CITY has the right to require the removal and replacement of any key manager of Lessee involved in the Project (including, without limitation, Lessee's Project Manager or Lead Designer) if CITY determines in good faith that such individual is not properly managing part of the Project. CITY shall make any such request discretely and, only after proper consultation with Lessee and good faith efforts to resolve the problems with the Lessee. Lessee is responsible for any labor costs arising in connection with the replacement of any Project-related personnel.

(D) Additional Project Management Related Duties. The Parties shall endeavor to keep one another fully appraised of any material developments, delays or problems associated with its Project-related obligations.

(E) Quality of Project Personnel. Lessee shall employ or engage only competent and skilled personnel to perform its Sustainability Initiative-related undertakings and shall remove from the Project any personnel determined by it or CITY to be unfit, unresponsive, inaccessible or to be acting in violation of any provision of this Contract or Applicable Law. Lessee is responsible for maintaining harmonious labor relations with all personnel involved in the Project. Lessee shall comply with and enforce project and Jobsite procedures, regulations, work rules and work hours established by CITY. Lessee shall inform CITY in advance of the identity of each and every individual involved in the Project on its behalf.

(F) Representatives. Upon execution of this Ground Lease, CITY shall designate in writing to Lessee the name of the individual who is to be CITY's Authorized Representative to act on behalf of CITY in accordance with the provisions of this Ground Lease. Upon execution of this Ground Lease, Lessee shall designate in writing to CITY the name of the person who is to be Lessee's Authorized Representative to act on behalf of Lessee in accordance with the provisions of this Ground Lease. From time to time following the execution hereof, CITY may change or replace its representative and Lessee may change or replace Lessee's representative upon seven (7) Days written notice to the other party, delivered to such party in the manner and at the address specified in "Notices" section of this Exhibit.

SECTION 36 - RELATIONSHIP BETWEEN THE PARTIES:

The City is neither a joint venturer with nor a partner or associate of Lessee with respect to any matter provided for in this Lease Agreement. Nothing herein contained shall be construed to create any such relationship between the parties or to subject the City to any obligation of Lessee whatsoever.

SECTION 37 - LESSEE'S REPRESENTATIONS, WARRANTIES AND COVENANTS:

Lessee hereby represents and warrants to, and covenants with, CITY that:

- (A) Lessee is a _____ corporation duly formed, validly existing and in good standing under the laws of the State of Georgia. Lessee has all requisite power and authority to enter into this Ground Lease.
- (B) The execution, delivery and performance by Lessee of this Contract have been duly authorized by all necessary action and will not violate the charter documents of Lessee or result in the breach of or constitute a default under any material Ground Lease to which Lessee is a party or by which Lessee or its material assets may be bound or affected;
- (C) This Ground Lease has been duly executed and delivered by Lessee and this Ground Lease and the documents referred to herein constitute valid, binding and enforceable obligations of Lessee.
- (D) CITY can rely on the accuracy and correctness of all information provided by Lessee pursuant to this Ground Lease.

SECTION 38 - No Conflicts. This Ground Lease is not prohibited by and does not conflict with any other Ground Leases, instruments, judgments or decrees to which Lessee is a party or is otherwise subject.

SECTION 39 - CITY'S REPRESENTATIONS:

CITY hereby represents and warrants to, and covenants with, Lessee that:

- (A) CITY is a municipal corporation, validly existing under the laws of the State of Georgia. CITY has a requisite power and authority to enter into this Contract.
- (B) The execution, delivery and performance by CITY of this Contract has been duly authorized by CITY.

SECTION 40 - CONFIDENTIALITY AND OWNERSHIP OF WORK PRODUCT

Subsection 40.01 - Confidentiality and Non-exclusivity. Except as may be required by Applicable Law or court order, each of CITY and Lessee agree to hold in strict confidence the

existence and the terms of this Ground Lease and further agree that each will not, without the prior written consent of the other, disclose to any third party (other than, to the extent necessary, CITY's and Lessee's advisors, Subconsultants, lenders, affiliates and its parent companies) the economic terms or the subject matter of the Construction Documents or any other information (marked as confidential) provided by or on behalf of the other party.

Subsection 40.02 - Non Disclosure Obligations. In connection with the exercise of their rights and the performance of their obligations under this Contract, the Parties are likely to gain knowledge of each other's Trade Secrets and Confidential Information. Each Party acknowledges that any unauthorized disclosure or use of the other Party's Trade Secrets or Confidential Information would be likely to injure the other Party irreparably. Except as is specifically required or permitted by this Contract, neither Party shall, without the express prior written consent of the other Party, redistribute, market, publish, disclose or divulge to any other person or entity, or use or modify for use, directly or indirectly in any way for any Person: (i) any of the other Party's Confidential Information during the Term and for five (5) years thereafter; and (ii) any of the other Party's Trade Secrets at any time during which such information shall constitute a Trade Secret (before or after the end of the Term). Each Party acknowledges that its misuse or unauthorized disclosure of the other Party's Confidential Information or Trade Secrets shall entitle the other Party to injunctive or other equitable relief. For purposes of this Contract the following terms shall have the following meanings: "Trade Secrets" means information (including, without limitation, confidential business information, technical or non-technical data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, financial data, financial plans, product plans, lists of actual or potential customers or suppliers) that: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. "Confidential Information" means, with respect to a Party, all valuable, proprietary and confidential information belonging to or pertaining to the Party that does not constitute a Trade Secret of the Party and that is not generally known by or available to the Party's competitors but is generally known only to the Party and those of its employees, independent Lessees, clients or agents to whom such information must be confided for internal business purposes. On or prior to the Effective Date, Lessee shall have provided CITY with a written description of all information or data that CITY will be exposed to that Lessee believes constitutes its Confidential Information or Trade Secrets.

Subsection 40.03 - Non-Confidential Information. The foregoing non-disclosure and non-use covenants shall not apply to any information or data of a Party that the other Party can show by clear and convincing evidence is at the time of use or disclosure by the other Party readily available to the public other than as a result of or through an unauthorized disclosure.

Subsection 40.04 - Compelled Disclosure. In the event either Party or anyone to whom the Party transmits Confidential Information or Trade Secrets is requested or becomes legally

compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, or any similar process) to disclose any of such information, the Party so compelled will provide prompt written notice of the requirement to disclose to the other Party so that the notified Party may seek a protective order or other appropriate remedy, waive compliance with the provisions of this Contract or both. In the event that the protective order or other remedy is not obtained or that the notified Party waives compliance with the provisions of this Contract, the legally compelled Party will furnish only that portion of the Confidential Information or Trade Secrets that is legally required to be disclosed and will exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the disclosed information.

Subsection 40.05 - Public Records Law. It is understood that Lessee and CITY are or may in the future be subject to public records disclosure laws, and that these laws will govern the disclosure responsibilities of Lessee and CITY notwithstanding the terms of this Contract. To the extent reasonably practical, Lessee and CITY will notify each other of any public records requests affecting information or data protected by this section, and will give the other Party a reasonable opportunity to contest the public records request.

Subsection 40.06 - Public Communications. All press releases and other public communications of any sort relating to this Contract or the Services shall be subject to the prior approval of CITY. Any use of CITY's or Airport's name in any advertising or marketing materials shall also be subject to the prior written approval of CITY.

Subsection 40.07 - Equitable Relief in the event of Breach. Lessee and CITY shall be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the confidentiality, non-disclosure or non-use covenants of this Contract by the other Party because of the likely irreparable harm that would result from such a breach. Those remedies, however, shall not be deemed to be the exclusive remedies for a breach of this Contract or other Applicable Laws governing Trade Secret or Confidential Information use or disclosure by Lessee, CITY or their respective representatives, but shall be in addition to all other remedies available by law or equity.

SECTION 41 - GOVERNING LAW; DISPUTES PROCEDURE

Subsection 41.01 - Governing Law. This Contract shall be governed by the laws of the State of Georgia without giving effect to any choice of law principles that could result in the application of the laws of any other jurisdiction as more fully set forth in the Dispute Resolution Section of the Ground Lease Agreement.

Subsection 41.02 - Lease Interpretation. All questions concerning interpretation or clarification of this Contract or applicable standards and codes, including the discovery of conflicts, discrepancies, errors or omissions, or the acceptable performance thereof by Lessee, shall be immediately submitted in writing to the Authorized Representative for resolution. In

resolving conflicts, discrepancies, errors or omissions, including, but not limited to, interpretations pursuant to this Subsection, the following order of precedence will be used:

- (A) Ground Lease Agreement;
- (B) Exhibit E - Program Requirements;
- (C) Exhibit C - Design and Construction requirements;
- (D) Exhibit F - Operations and Maintenance Requirements;
- (E) Exhibit I – Milestones and Liquidated Damages;
- (F) Exhibit H – Safety and Health Plan;
- (G) Exhibit G – Airport Security Requirements; and
- (H) Lessee Submittals.

Subsection 41.03 - Compliance with City Work Rules.

(A) **Obligation of Lessee to Comply.** Lessee acknowledges that it has received a copy of the City Rules. Lessee agrees that all employees assigned to fulfill this Contract shall read and agree to all City Rules. Lessee will be responsible for acquainting each Lessee employee with the contents of the City Rules and ensuring that each employee abides by them. Lessee represents and warrants that no employee of City, or any employee of any City-affiliated company, is employed by Lessee, or is receiving or has received any compensation or any other remuneration now or at any other time from Lessee, or any agent of Lessee. Lessee shall provide its employees, representatives and work vehicles with identity badges, or other identification materials required by the City in accordance with current City requirements. All employees of Lessee shall abide by all City Rules, while on City premises. City shall have the right to modify the City Rules or promulgate additional work rules, and Lessee and its agents and employees shall comply with such modified or additional rules immediately following Lessee's receipt of a written copy thereof. All individuals employed or engaged by Lessee to perform the sustainability Project for City under any job classification shall possess the expertise, knowledge, and experience requirements of said classification, including any professional licenses and/or certifications required. The City Rules include, but are not limited to the following:

(B) **Gratuities and Kickbacks.** NEITHER LESSEE NOR ANY OF ITS EMPLOYEES OR AGENTS SHALL ENGAGE IN ANY ACT DEEMED UNETHICAL UNDER SECTION 2-1484 OF THE CODE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER LESSEE NOR ANY OF ITS EMPLOYEES OR AGENTS SHALL, DIRECTLY OR INDIRECTLY, OFFER, GIVE OR AGREE TO GIVE ANY EMPLOYEE OR FORMER EMPLOYEE OF THE CITY A GRATUITY OR AN OFFER OF EMPLOYMENT IN CONNECTION WITH OR RELATED TO THIS CONTRACT OR ANY PROPOSALS OR

RESPONSES SUBMITTED HEREUNDER, AND LESSEE SHALL NOT ACCEPT ANY PAYMENT, GRATUITY OR OFFER OF EMPLOYMENT MADE BY OR ON BEHALF OF A SUBCONSULTANT OR ANY PERSON ASSOCIATED THEREWITH AS AN INDUCEMENT FOR THE AWARD OF A SUBCONTRACT OR ORDER.

(C) **Contingent Fees.** Lessee represents and warrants that it has not employed or retained any Person, other than a bona fide employee working for Lessee, to solicit or secure this Contract, and that Lessee has not paid or agreed to pay any Person, other than a bona fide employee working for Lessee, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Contract. For a breach or violation of the above warranty, and upon such a finding after notice and hearing, and without limiting such other rights or remedies City may have pursuant to this Contract or pursuant to Applicable law, City shall have the right to terminate this Contract without liability, and at its discretion, deduct from the Contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

(D) **No Conflict Obligation.** Neither Lessee nor any of its employees shall engage in any business or transaction or professional activity, or shall incur any obligation of any nature that is in conflict with the proper discharge of its duties to City during the Project.

(E) **Equal Employment Opportunity Clause.** As required by Code Section 2-1414, as well as Appendix A, Lessee agrees as follows:

(i) Lessee shall not discriminate against any employee, or applicant for employment, because of race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, disability, or political affiliation. As used here, the words "shall not discriminate" shall mean and include without limitation the following:

Recruited, whether by advertising or other means; compensated, whether in the form of rates of pay, or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.

(ii) Lessee agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of the EEO clause.

(iii) Lessee shall, in all solicitations or advertisements for employees, placed by or on behalf of Lessee, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, disability, or political affiliation.

(iv) Lessee shall send to each labor union or representative of workers with which Lessee may have a collective bargaining Ground Lease or other contract or understanding a notice advising the labor union or workers' representative of Lessee's commitments under the equal employment opportunity program of the City of Atlanta and under the Code and shall post copies of the notice in conspicuous places available to employees and applicants for employment. Lessee shall register all workers in the skilled trades who are below the journeyman level with the U.S. Bureau of Apprenticeship and Training.

(v) Lessee shall furnish all information and reports required by the Ground Lease compliance officer pursuant to the Code, and shall permit access to the books, records, and accounts of the Lessee during normal business hours by the contract compliance officer for the purpose of investigation so as to ascertain compliance with the program.

(vi) Lessee shall take such action with respect to any Subconsultant as City may direct as a means of enforcing the provisions of Subsections (i) through (viii) herein, including penalties and sanctions for noncompliance; provided, however, that in the event Lessee becomes involved in or is threatened with litigation as a result of such direction by City, City will enter into such litigation as is necessary to protect the interest of the City and to effectuate the equal employment opportunity program of City; and, in the case of contracts receiving federal assistance, Lessee or City may request the United States to enter into such litigation to protect the interests of the United States.

(vii) Contactor and its Subcontractors, if any, shall file compliance reports at reasonable times and intervals with City in the form and to the extent prescribed by the contract compliance officer. Compliance reports filed at such times directed shall contain information as to employment practices, policies, programs and statistics of Lessee and its Subcontractors.

(viii) Lessee shall include the provisions of Subsections (i) through (viii) of this Equal Employment Opportunity Clause in every subcontract or purchase order so that such provisions will be binding upon each Subcontractor or vendor.

(ix) A finding, as hereinafter provided, that a refusal by Lessee or a Subcontractor to comply with any portion of this program, as herein provided and described, may subject the offending party to any or all of the following penalties:

(A) Withholding from Lessee all future payments under this Ground Lease until it is determined that Lessee or Subcontractor is in compliance with the provisions hereof;

(B) Refusal of all future bids for any contract with the City of Atlanta or any of its departments or divisions until such time as Lessee or Subcontractor demonstrates that there has been established and there shall be carried out all of the provisions of the program as provided in the Code;

(x) Cancellation of this Contract. In a case in which there is substantial or material violation of the compliance procedure herein set forth, appropriate, proceedings may be brought to enforce those provisions, including the enjoining, within applicable law, of Lessees, Subcontractors or other organization, individuals or groups who prevent or seek to prevent directly or indirectly compliance with the policy as provided in this Ground Lease.

SECTION 42 - TIME OF THE ESSENCE.

Time is expressed to be of the essence of this Agreement.

SECTION 43 - SURRENDER AND MERGER.

The voluntary or other surrender or termination of this Lease Agreement by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of the City, terminate all or any existing subleases or sub-tenancies applicable to the Leased Premises or may, at the option of the City, operate as an assignment to the City of all such subleases or sub-tenancies.

SECTION 44 - SUCCESSORS AND ASSIGNS.

Subject to the terms and conditions of Section 27 hereof, the provisions of this Lease Agreement shall bind and inure to the benefit of the successors and assigns of the parties hereto.

SECTION 45 - HEADINGS.

The headings contained herein, including the Table of Contents, are for convenience of reference and are not intended to define or limit the scope of any provisions of this Lease Agreement.

SECTION 46 - SEVERABILITY.

If any provision of this Lease Agreement or the application thereof to any person or circumstances shall become invalid or unenforceable to any extent, such provision shall be struck and severed and the remainder of this Lease Agreement shall not be affected and shall continue to be enforceable to the greatest extent of the law. Each covenant and agreement contained in this Lease Agreement shall be construed to be a separate and independent covenant and agreement and the breach of any such covenant or agreement by the City shall not discharge or relieve Lessee from Lessee's obligation to perform each and every covenant and agreement of this Lease Agreement to be performed by Lessee.

SECTION 47 - ENTIRE AGREEMENT.

It is expressly agreed by the City and Lessee that this Lease Agreement is the entire agreement of the City and Lessee. All written or oral representations, warranties, understandings, stipulations, agreements, promises or discussions prior to or simultaneous to this Lease Agreement are merged and incorporated into this Lease Agreement and cannot be relied upon by either party.

SECTION 48 - CUMULATIVE RIGHTS.

Each right and remedy of the City provided for in this Lease Agreement, or now or hereafter existing at law, in equity or by statute or otherwise, shall be cumulative and concurrent, and the exercise or beginning of the exercise of any one or more of such rights or remedies shall not preclude the exercise of that right or remedy in the future or the exercise of any other right or remedy at any time.

SECTION 49 - FORCE MAJEURE.

Neither party shall be deemed to be in breach of this Lease Agreement by reason of a failure to perform any of its obligations hereunder to the extent that such failure is caused by strike or labor troubles, unavailability of materials or utilities, riots, rebellion, terrorist attack, insurrection, invasion, war, action or interference of governmental authorities, acts of God, severe weather conditions, or any other cause whether similar or dissimilar to the foregoing which is reasonably beyond the control of the parties (collectively "Force Majeure Event"). If either party claims the occurrence of a Force Majeure Event, such party must promptly give notice to the other of the existence of such Force Majeure Event, the nature and extent thereof, the obligation hereunder affected thereby and the actions to be taken to abate or terminate such event. Notwithstanding the existence of any Force Majeure Event, this clause shall not apply to and Lessee shall not be relieved of its obligation to pay rent or other sums due hereunder, such obligation being absolute and unconditional.

SECTION 50 - REAL ESTATE BROKERAGE COMMISSION.

City represents and warrants to Lessee and Lessee represents and warrants to City that it has dealt with no real estate broker who would be entitled to be paid a commission or other fee in connection with the transaction which is the subject of this Lease Agreement.

SECTION 51 - MISCELLANEOUS

Subsection 51.01 - Third Party Beneficiary. The provisions of this Ground Lease are for the exclusive benefit of the parties hereto and not for the benefit of any third person, nor shall this Ground Lease be deemed to have conferred any rights, express or implied, upon any third person unless otherwise expressly provided for herein.

Subsection 51.02 - Audit Rights. From time to time during the Term and for a period of three (3) years after it, Lessee shall maintain, and CITY shall have the right to inspect and audit at its

sole cost and expense, Lessee's books, records, technology, processes and data to verify the amounts due under this Contract and Lessee's compliance with its obligations under this Contract. The audit may take place during normal business hours upon not less than five days advance written notice to Lessee. If CITY discovers a discrepancy between Lessee's records and any amount invoiced, paid or otherwise charged to CITY, then Lessee shall promptly pay CITY the amount of the undisputed difference, plus interest thereon accruing at the rate of 1.5% per month or the maximum amount permitted by applicable law, whichever is less. In addition, if the amount (determined as of the date of the audit) of such difference with respect to the item or service in question is greater than 5%, Lessee shall also pay all reasonable costs and expenses incurred by CITY in connection with the inspection and audit notwithstanding anything herein to the contrary.

Subsection 51.03 - Waiver of Consequential Damages. Notwithstanding anything contained in this Contract to the contrary, neither the Lessee nor the CITY shall be liable to the other for any special, indirect or consequential losses or damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including but not limited to losses of use, profits, business, capital, reputation or financing. The consequential damages limitation set forth herein is not intended to affect the payment of liquidated damages, if any, which both parties recognize has been established, in part, to reimburse the CITY for some damages that might otherwise be deemed to be consequential.

Subsection 51.04 - Affiliates. Lessee shall not enter into any contract, Ground Lease, purchase order or other arrangement for the furnishing of any of these services covered by this Ground Lease with any party or entity if such party or entity is a party related or otherwise affiliated with Lessee unless and until such arrangement has been approved in writing by CITY, after full disclosure in writing by Lessee to CITY of such affiliation or relationship together with all details relating to the proposed arrangement.

Subsection 51.05 - Required Approvals and Consents. Except as otherwise expressly provided in this Ground Lease, the approval of either Lessee or CITY as to any matter requiring the approval of such party pursuant to this Ground Lease, shall not be unreasonably withheld, and failure by either Lessee or CITY to disapprove, within the time period specified herein, any item required to be submitted for such party's approval shall be deemed to be approval thereof.

Subsection 51.06 - Amendment; Waiver. No alteration, amendment or modification hereof shall be valid unless recording by an instrument in writing and executed by the parties hereto with the same formality as this Ground Lease, except as required herein or by Applicable Law. The failure of Lessee or CITY to insist in any one or more instances upon the strict performance of any of the covenants, Ground Leases, terms, provisions or conditions of this Ground Lease or to exercise any election herein contained shall not be construed as a waiver or relinquishment for the future of such covenant, Ground Lease, term, provision, condition, election or option, but the same shall continue and remain in full force and effect. No waiver by the Lessee or CITY of any covenant, Ground Lease, term, provision or condition of this Ground Lease shall be

deemed to have been made unless expressed in writing and signed by an appropriate official on behalf of CITY or Lessee.

To Lessee:

with a copy to:

To CITY:

with a copy to:

Subsection 51.07 - Fraud and Misrepresentation. Any written or oral information provided by [insert as appropriate "Contractor" or Service Provider"], directly or indirectly related to the performance of the services required by this Ground Lease, constitutes material representations upon which the City relies for the requirements of the Ground Lease and compliance with local, state and federal laws, rules and regulations. [Contractor] agrees to notify the City immediately of any information provided to the City that it knows and/or believes to be false and/or erroneous and immediately provide correct information to the City and take corrective action. [Contractor] further agrees to notify the City immediately of any actions or information that it believes would constitute fraud or misrepresentation to the City in performance of this Ground Lease, whether or not such information actually constitutes fraud and/or misrepresentations, by contacting the Integrity Line 1-800-884-0911. [Contractor] agrees to place signage provided by the City regarding the Integrity Line at the location to which [Contractor's] employees report to perform the services required by this Ground Lease. [Contractor] acknowledges and agrees that a finding of fraud or other impropriety on the part of the [Contractor] or any of its [subcontractors] may result in suspension or debarment of the [Contractor]; and the City may pursue any other actions or remedies that the City may deem appropriate. [Contractor] agrees to include this clause in its [subcontracts] and take appropriate measures to ensure compliance with this provision.

Subsection 51.08 - Georgia Open Records Act. Information provided to the City is subject to disclosure under the Georgia Open Records Act ("GORA"). Pursuant to O.C.G.A. § 50-18-72(a)(34), "[a]n entity submitting records containing trade secrets that wishes to keep such records confidential under this paragraph shall submit and attach to the records an affidavit affirmatively declaring that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10 [O.C.G.A. § 10-1-760 et seq.]."

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officials or officers, to be attested, and their respective seals to be hereunto affixed, as of the day and year first above written.

ATTEST:

XXXXXXXXXXXXXXXXXXXX

Member/Manager

By: _____
XXXXXXXXXX

Name: _____

Title: _____

ATTEST:

CITY OF ATLANTA:

Municipal Clerk

By: _____
Mayor

RECOMMENDED:

APPROVED:

Aviation General Manager

Chief Procurement Officer

APPROVED AS TO FORM:

Assistant City Attorney

EXHIBIT A

Survey and Legal Description of the Property – Leased Premises

EXHIBIT B

Legislation

Ground Lease

EXHIBIT C

DESIGN AND CONSTRUCTION REQUIREMENTS

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Attachments

Attachment 1: Scheduling Requirements

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ARTICLE I

DEFINITIONS

All definitions listed below are applicable to this **Exhibit C** to the Ground Lease.

Definitions. As used in this **Exhibit C** to the Ground Lease, the following terms shall have the meanings indicated unless a different meaning is specifically provided or unless the context otherwise requires:

“Acceptance” means CITY’s written acceptance of a Deliverable or Work in accordance with the terms of this Ground Lease.

“Action” means any demand, assertion, claim, action or proceeding, judicial or otherwise.

“Airport” means Hartsfield-Jackson Atlanta International Airport.

“Approval” means all permits, permissions, consents, approvals and licenses from all government authorities having jurisdiction or approval rights with respect to the Project and as otherwise described in this Lease Agreement.

“Beneficial Occupancy” means the stage of construction before Final Acceptance at which the Lessee does occupy the building, structure or facility, or a portion thereof, for the purpose it was constructed.

“Calendar Day” means every day of each year. All dates and durations on the Project are based on Calendar Days.

“Change of Control” means with respect to a legal entity: (i) the sale of all or substantially all of the entity’s assets to a third party; (ii) a merger of the legal entity with another entity, including, without limitation merger structures where the legal entity survives the merger (e.g. reverse or forward triangular mergers); or (iii) a transaction or related series of transactions resulting in the sale of the stock, membership units or other equity of the entity (a) constituting either fifty-one percent (51%) or more of the equity of the entity or (b) giving the purchaser Control of the entity.

“CITY Rules” means such codes of ethics, business standards, and/or work rules of the CITY that are from time to time modified.

“Claim” means a written demand or assertion by the Lessee seeking an extension or shortening of any Milestone, the adjustment or interpretation of Lease Agreement terms, or other relief arising under or relating to the Lease Agreement following denial of a submittal for Change Notice Request.

“Code” means the Code of Ordinances of the CITY of Atlanta, Georgia Ordinances.

“Consent of Surety” means a written confirmation from the Surety approving an action.

“Construction Documents” means the sealed Plans and Specifications of Lessee that are issued for construction. The Design Architect and Design Engineer shall be licensed by the State of Georgia. The Program Requirements establish the obligations of Lessee to meet certain parameters. The Program Requirements will be modified through the CITY’s acceptance of Design Architect’s /Engineer’s deliverables for design and the Construction Documents as set forth in **Exhibit C** and in this Lease Agreement.

“Contractor” means the “Lessee” when used from time to time in this Ground Lease.

“Critical Path Method” means the method of project scheduling set forth on **Exhibit C, Attachment 1** and/or in **Exhibit I**.

“Deadline” means any timeframe or deadline for performing any Services or delivering any Deliverables, as provided in this Ground Lease, including, without limitation, the Deadlines set forth on **Exhibit I**.

“Deliverables” means Plans, Specifications, Drawings, Equipment, Software, Materials, systems, or other items that are to be designed, developed, and procured by or through Lessee for CITY in connection with the Project.

“Design Architect” means the firm(s) selected or to be selected by Lessee, with CITY’s reasonable approval, responsible for the design of the Project.

“Design Engineer” means the firm(s) selected or to be selected by Lessee, with CITY’s reasonable approval, for the engineering design of the Project under the direction and supervision of the Design Architect.

“Drawings” means the graphic and pictorial portions of the Construction Documents showing the design, location and dimensions of the Work, including plans, elevations, sections, details, schedules and diagrams.

“Emergency Telephones” or “ETEL” means emergency telephone system for the public.

“Equipment” means all equipment, machinery, and associated supplies that are required to be delivered to CITY pursuant to this Ground Lease.

“Firm(s)” means any individual, partnership, corporation, association, joint venture or other legal entity permitted by law to practice or offer professional or consultant services.

“Final Completion” means the sustainability initiative or a specific portion thereof shall be deemed Finally Completed when the Lessee so certifies to the City in writing and the Lessee has provided the City with “As-Built Drawing and Specifications”, commissioning documentation in digital format, and copies of all maintenance manuals and digitally recorded maintenance training sessions.

“Force Majeure Event (Construction)” shall mean (a) strikes, labor disputes, work stoppages, or picketing (legal or illegal); (b) adverse weather conditions not reasonably foreseeable or unusually severe weather; (c) acts of God, including, without limitation, floods, hurricanes, tornadoes, high winds, sinkholes, landslides, earthquakes, epidemics, quarantine and pestilence; (d) fires or other casualties; (e) freight embargoes; (f) governmental actions, restrictions or moratoria; (g) acts of a public enemy, civil commotion, riots, insurrections, acts of war, blockades, terrorism, effects of nuclear radiation or national or international calamities; (h) sabotage or vandalism; (i) condemnation or other exercise of the power of eminent domain; (j) the passage or enactment of, or the interpretation of, any governmental requirement, and the orders of any governmental authority having jurisdiction over Lessee or the Work; (k) delays in any approval process of any governmental authority to the extent such delays are not due to any fault, negligence, or lack of diligence of Lessee or its agents, employees, contractors, subcontractors, or consultants; (l) actions of CITY (and its agents, employees or other representatives) not permitted by the Ground Lease or by law; (m) inconvenience, delays, inefficiencies or loss experienced by Lessee caused by the presence and operations of other CITY contractors working within the limits of the Project; and (n) restraint or other act by court or public authority to the extent such delays are not due to any fault, negligence, or lack of diligence of Lessee or its agents, employees, contractors, subcontractors, or consultants. Force Majeure shall in any event exclude: (a) lack of sufficient funds or any other financial difficulty of Lessee, and (b) adverse weather (1) occurring during non-work periods or on any day which is not a workday, unless Lessee can demonstrate that said weather impeded the Work the following day; or (2) which shall not result in a direct and actual delay in Lessee’s performance of Work at the time of such inclement weather.

“GAAP” means generally accepted accounting principles in effect in the United States of America from time to time.

“Governmental Authority(ies)” means any federal, state and/or local agency, department, commission, board, bureau, administrative or regulatory body or other instrumentality having jurisdiction over all or a portion of the Work.

“Insolvency/Bankruptcy Event” shall be deemed to have occurred if Lessee: (i) is subject to a petition for relief under the laws of the United States codified as Title 11 of the United States Code; (ii) is subject to an involuntary petition for relief under the United States bankruptcy laws; (iii) seeks, consents to or does not contest the appointment of a receiver, custodian or trustee for itself

or for all or any part of its property; (iv) files a petition seeking relief under the bankruptcy, arrangement, reorganization or other debtor relief laws of any state or other competent jurisdiction; (v) admits in writing that it is generally not paying its debts as those debts become due; (vi) gives notice to any governmental body of insolvency or pending insolvency; (vii) suspends material business operations; (viii) becomes “insolvent” as that term is defined under applicable fraudulent transfer or conveyance laws; or (ix) makes an assignment for the benefit of creditors or takes any other similar action for the protection or benefit of creditors.

“Intellectual Property Rights” means a) copyrights, trademarks, moral rights, and any other rights to any form or medium of expression, (b) trade secrets, privacy rights, and any other protection for confidential information or ideas, (c) patents and patent applications, (d) any items, information or theories which are protectable or registrable under any of the copyright, patent, trade secret, trademark, confidentiality or other similar laws, and (e) any other similar rights or interests, recognized by Applicable Law.

“Leased Premises” means the location where the sustainability project and Systems are to be constructed, installed and implemented and where any related sustainability initiatives are to be performed.

“Material Safety Data Sheet” means a document that provides pertinent information about the nature of a particular chemical substance or mixture, which Material Safety Data Sheet is developed by the manufacturer or formulator of the hazardous substance or mixture. The specific criteria for a Material Safety Data Sheet are defined and prescribed in Title 29 of the Code of Federal Regulations, Section 1910.1200.

“Material Adverse Effect” means an actual or, in CITY’s good faith opinion, an imminent, material adverse effect, change, or impact on the quality or timeliness of the Deliverables or Services or the ability of either Party to meet its obligations under this Ground Lease.

“Materials” means all supplies, products, tools, appliances, Equipment, Software and utilities that are needed or used by Lessee to build, construct, install, integrate, implement, test, commission, operate, maintain and support the Project.

“Milestone” means any required steps, stages, phases and service levels associated with the Deliverables or Services that Lessee is required to meet, including, without limitation, the Milestones set forth on **Exhibit I**.

“Notice to Proceed” means formal written notice from CITY to Lessee directing Lessee to begin performing its obligations under this Lease Agreement, which may be issued contemporaneously with or after the formal execution of this Lease Agreement by CITY.

“Permits” means permits, consents, approvals, authorizations, certificates and approvals from all Governmental Authorities, quasi-Governmental Authorities, which are required for the planning, design, construction, completion, use and occupancy of the Project and the Project Improvements.

“Person” means an individual, partnership, corporation, joint stock company, trust (including a business trust), unincorporated association, joint venture or any other entity, the United States, or a federal, state or political subdivision thereof or any agency or court of such state or subdivision.

“Program Requirements” means the program for the design, construction and equipping of the sustainability initiative as set forth in **Exhibit E** and made a part of this Ground Lease.

“Project” shall mean the ATL Energy Park as defined by the Program Requirements and the permitted drawings and specification.

“Project Schedule” means the time period for performing components of the Work, including phasing of construction, times of commencement and completion required of each component of construction, and ordering and delivery of equipment requiring long lead-time, following the requirements as attached as **Exhibit C, Attachment 1**, as the same may be updated from time to time by Lessee in accordance with the terms of this Ground Lease.

“Request For Proposal” means CITY’s solicitation for proposals for the work governed by this Lease Agreement.

“Response” means all responses, proposals and other information submitted by Respondents in response to CITY’s Request For Proposal.

“Services” means all services, tasks, functions, or assignments to be performed by Lessee for CITY under this Lease Agreement, whether one-time or recurring. This Lease Agreement uses the term “Deliverable” to refer, generally, to tangible deliverables (e.g. Drawings, Plans, Specifications, Software, equipment, etc.) and “Services” to refer to tasks, functions and related obligations of Lessee, but for purposes of this Lease Agreement, unless context clearly suggests otherwise, “Deliverables” shall be deemed to include “Services” and “Services” shall be deemed to include “Deliverables.”

“Software” means any computer programs and applications, in both human readable source code and machine readable object code format, that comprise a part of or are to be delivered in connection with the System, as a Deliverable or in conjunction with the Services, together with any modifications, bug fixes, updates, upgrades, new versions and derivative works associated with those computer programs and applications, and all associated documentation supplied in accordance with the Ground Lease.

“Specifications” means the written requirements for materials, equipment, construction systems and standards and workmanship for the Work and performance of related services, as depicted by the Design Architect in the Ground Lease Documents.

“Subcontractor” means any Person that Lessee has contracted to perform Work required under the Lease Agreement.

“Substantial Completion” or “Substantially Completed” means the Project, or a specified portion thereof, shall be deemed Substantially Completed or having achieved Substantial Completion when (a) the Work is sufficiently complete in accordance with the Ground Lease Documents so the Lessee can occupy or utilize the Project, or a specified portion thereof, for its intended use, and (b) the Lessee has inspected all Work, and certifies that the Work, except as noted, is completed in accordance with the Ground Lease Documents and prepared a punchlist identifying all incomplete and non-conforming items of Work and (c) the Lessee has obtained all necessary permits and regulatory approvals necessary for the Lessee to occupy and begin use or operation and (d) all operations and maintenance manuals have been accepted by Lessee and copies have been provided to the City.

“Suppliers” means suppliers selected and engaged by Lessee to supply materials and equipment necessary for the Deliverables and Work.

“Surety” means the corporation, partnership, or individual, other than the Lessee, executing payment or performance bonds which are furnished to the CITY by the Lessee.

“Sustainability Initiative” means the design, construction, financing, operation and maintenance of the Green Acres ATL Energy Park during the term of the Ground Lease Agreement repurposing/reprocessing/recycling ninety (90%) percent of the Municipal Solid Waste generated at Hartsfield Jackson Atlanta International Airport and the City’s Department of Public Works from landfill facilities.

“System” means the Operating System, System Fixed Facilities, Station Fixed Facilities, (as those terms are defined in **Exhibit E, Background and Program Requirements**) and ancillary equipment and spare parts that together comprise the completed Project.

“Work” means all of the administrative, manufacturing and supply, installation, construction, check-out, testing, verification, acceptance, management, documentation, and other duties, Operations and Maintenance and Services of the Lessee to produce and deliver a fully functioning Project, that satisfies all of the requirements of this Lease Agreement.

ARTICLE II

LESSEE'S RESPONSIBILITIES

2.1 Design and Construction Obligation.

(a) Lessee shall not begin performing Services until it has received a Notice to Proceed. Lessee shall assume all financial and other risks for performing or preparing to perform the Services prior to receiving the Notice to Proceed.

(b) Subject to the provisions of this Ground Lease, Lessee hereby undertakes to cause and obtain the (i) design, permitting, and construction of the Work in accordance with this **Exhibit C, Design and Construction Documents** pursuant to **Exhibit E, Background and Program Requirements**, (ii) to cause Substantial Completion of the same to occur on or before the Scheduled Completion Date, as the same may be extended pursuant to the provisions of this Lease Agreement, and (iii) to equip the Project in accordance with the Program Requirements. All costs, expenses and expenditures in connection with the permitting, design and construction of the Work, including, without limitation, the amounts owing to the Subcontractors and Suppliers for supervision, transportation, labor, materials or Permits or other matters in connection with the Work, shall be paid by Lessee.

(c) Lessee shall manage, direct and cause the permitting, design, construction and equipping of the Work, and shall coordinate the activities of all Subconsultants, Subcontractors and Suppliers involved therein. Lessee shall meet with the Design Architect and other Persons providing design Services or construction Work on a regular and frequent basis and as specifically provided herein in order to assure the performance of the Work in accordance with the terms of this Ground Lease. To the extent Lessee has, obtains, or retains rights under any Subcontract pertaining to the Work, Lessee will exercise such rights in accordance with all approval and consent provisions provided to CITY in this Ground Lease. Lessee shall ensure that all warranties provided by the Subcontractors, including, without limitation, the architectural, engineering and other design consultants, are consistent with the terms of this Lease Agreement.

(d) Lessee shall provide all labor, materials, equipment and all services required to implement the scope defined by the Lessee's construction drawings and specifications, as accepted by CITY and in accordance with the Program Requirements.

(e) Lessee shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other non-construction services furnished by the Lessee under this Lease Agreement. The Lessee shall, without compensation, correct or revise any errors or deficiency in the designs, drawings, specifications and other non-construction services and perform any necessary rework or modifications including any damage to real personal property, resulting from the design error or omission.

(f) The standard of care for all design services performed under this Lease Agreement shall be the care and skill ordinarily used by members of the architectural or engineering professions practicing under similar conditions at the same time and locality. Notwithstanding the above, in the event that the Ground Lease specifies that portions of the Work be performed in accordance with a performance standard, the design services shall be performed so as to achieve such standards.

(g) Neither the City's review nor acceptance of the services required under this Ground Lease, shall be construed as a waiver of any rights under this Ground Lease or any cause of action arising out of performance of this Ground Lease. The Lessee shall remain liable to the City in accordance with applicable law for all damages to the City caused by the Lessee's negligent performance.

(h) The rights and remedies of the City provided for under this Ground Lease are in addition to any other rights and remedies provided by Applicable Law.

Services to be Performed by Lessee. Lessee shall cause the Project to be designed and constructed in an orderly, expeditious and efficient manner in accordance with the Applicable Laws, the Program Requirements, the Project Schedule, and the Construction Documents. Without limiting Lessee's obligations hereunder, Lessee shall:

(i) comply with the requirements of **Exhibit C, Attachment 1;**

(j) retain the services of the Design Architects and consultants and coordinate the design of the Project to achieve all of the Program Requirements set forth in **Exhibit E;**

(k) direct, coordinate and supervise the preparation of all submissions necessary in connection with the Permits to be obtained by Lessee, as appropriate and as notified by CITY, negotiate with and act as liaison to the Governmental Authorities in connection with obtaining such Permits. Lessee shall obtain and provide to the appropriate Governmental Authorities all drawings, documents, information, consents and such other items necessary to secure the Permits. All applications and other documents submitted by or on behalf of Lessee in connection with the Permits shall be available for review by CITY both prior to and after submission to the Governmental Authorities. Lessee shall keep CITY fully apprised of the status of processing the Permits and shall deliver copies of the Permits promptly after issuance by the Governmental Authorities. Notwithstanding anything to the contrary contained herein, Lessee shall not be required to obtain operational permits required for CITY business activities but will endeavor to identify and inform CITY of all required operational permits (including permits for the operation of power generation and fuel systems) not less than sixty (60) days prior to the Scheduled Completion Date.

(l) cause the construction services specified in the Ground Lease to be performed;

(m) negotiate, procure and retain the services of Subconsultants, Subcontractors and Suppliers, who shall, among other things, execute the design and construction of the Project;

(n) investigate, hire, contract with, train, pay, supervise and, when necessary, engage the personnel reasonably required to be employed or engaged in order to properly and timely perform the Work. Such personnel shall in every instance be deemed independent contractors, agents or employees, as the case may be, of Lessee and not of CITY, and all matters pertaining to the employment, engagement, supervision, compensation, promotion and discharge of such independent contractors, agents or employees shall be the sole responsibility of Lessee. All salaries, wages, commissions and other compensation or expense of personnel employed by Lessee hereunder, including so-called fringe benefits, medical and health insurance, pension plans, social security, taxes, workers' compensation insurance and all other expenses of Lessee are and shall be the responsibility of and paid by Lessee. Lessee shall use reasonable efforts to cause all personnel used by Lessee, the Design Architect, the Design Engineer, and any Subconsultants or Subcontractors in the performance of the design and/or construction of the Project to be qualified by training and experience to perform their assigned tasks; CITY shall have the right to require Lessee and any Person to replace any on-site personnel that CITY finds reasonably objectionable with other staff available to Lessee and reasonably acceptable to CITY.

(o) procure and maintain, and require the Design Architects and Subconsultants and Subcontractors to procure and maintain, with responsible companies reasonably acceptable to CITY, insurance coverage as set forth in **Exhibit D**. Such insurance shall in any event name the CITY as an additional insured, as their interests may appear. Such insurance shall include waivers by the respective insurance carriers of any and all rights of subrogation against the CITY, and Lessee shall promptly provide CITY with certificates evidencing such insurance;

(p) investigate and make a full timely written report to the insurance carriers of any accident at the Project, claim for damages relating to the design and/or construction of the Project, and damage to or destruction of the Project (and the estimated cost of repair thereof), and prepare and file any and all reports required by any insurance carriers in connection therewith;

(q) maintain at its regular business office separate, true and proper books, records, accounts, journals and files regarding its business transactions associated with the Project, and the design and construction of the Project, containing contracts, Ground Leases, all design documents (including, without limitation, the Construction Documents), shop drawings, change orders, applications for payment, Permits, rental Ground Leases and records, insurance policies, correspondence, receipts, bills, equipment purchase orders and vouchers, and all other documents and papers pertaining to the Project and/or the design and construction thereof; all financial

records relating to Project accounting shall be prepared in accordance with GAAP, consistently applied, and shall be available for audit, review and copying by CITY for a period of three (3) years after Final Acceptance of the Project;

(r) at all times during the term of this Ground Lease, take such action as may be necessary to comply with any and all Applicable Laws, to the extent that such Applicable Laws are susceptible of being complied with by Lessee or Persons under its control;

(s) promptly furnish to CITY, upon receipt by Lessee, copies of any and all legal notices received by Lessee affecting the Project, including, without limitation, notices from Governmental Authorities, and any other notice not of a routine nature;

(t) promptly notify CITY of any Action that is initiated or threatened in connection with the Project or against Lessee in connection with the Project.

ARTICLE III

DESIGN OF THE PROJECT

Design Consultants. Lessee shall provide a copy of such Design Subcontract and all amendments thereto to CITY for its review and comment. Lessee shall deliver to CITY a copy of all other contracts with any other consultants engaged by Lessee to perform design services in connection with the Project.

3.1 Development of Design Documents.

(a) Attached hereto as **Exhibit E** is the Program Requirements with respect to the contemplated Project. The Program Requirements may not be modified nor may the scope and/or quality of Work set forth therein be modified without the approval in writing by CITY. Within the times set forth in the accepted Project Schedule, Lessee shall cause the Design Architects to prepare and deliver, to CITY, Construction Documents as described herein.

(b) Lessee shall cause the Design Architects to timely prepare and deliver to CITY, but in no event later than the date set forth in the accepted Project Schedule unless otherwise agreed to in writing by CITY, for the review of CITY, complete Construction Documents, including Drawings, Plans and Specifications setting forth in detail all requirements for the Construction Documents.

(c) Lessee shall update as necessary, the Project Schedule setting forth the dates for delivery of the various design Deliverables and for the review thereof, durations of design phases and dates for required submittals and bid packages, and of all design meetings with the Design Architects, coordinated with the requirements of the Project Schedule, and shall deliver a copy of the Project Schedule and updates thereof to CITY sufficiently in advance to afford CITY an

opportunity to review the Project Schedule and to attend and participate in such meetings. Lessee shall prepare, or cause the Design Architects to prepare, minutes of each design meeting reflecting the decisions made, CITY comments given and objections raised at the meeting, and shall use its best efforts to accomplish distribution thereof to CITY and others in attendance within seven (7) days after each meeting. Such minutes shall be reviewed, amended if necessary, and approved at the next design meeting following the distribution thereof. Lessee is encouraged to propose “fast tracking” of Construction activities to maintain the Project Schedule.

(d) No change from a previously accepted design concept shall be permitted unless CITY agrees to the change in writing.

(e) Design will be accomplished in accordance with the Department of Aviation Design Guidelines located at <http://apps.atlanta-airport.com/engineeringguidelines/elements.asp?submod=main&typeid=1>

(f) CITY design reviews will occur at the Schematic Design, 65% Design Development, and 95% Construction Document design phases.

3.2 CITY’s Review and Approval.

(a) Any matters which are to be submitted to CITY for CITY’s review or consent shall be submitted to CITY under cover of a Request for Approval in the form attached hereto as **Exhibit C, Attachment 3** which shall state when Lessee wishes to have CITY’s response. If information which CITY reasonably deems necessary to fully accomplish its review of the matter in question is not provided to CITY, the applicable review period shall not commence until such information has been furnished to and received by CITY. During the course of such review, Lessee and CITY shall proceed in good faith and Lessee shall make available to CITY such Persons involved in either the preparation of the subject drawings and documents or the construction of the Project described therein as CITY shall reasonably request for the purpose of consultation and explanation of the subject drawings and documents. On or before the expiration of the review period, CITY shall prepare and submit to Lessee in writing any comments, suggestions, modifications or objections it may have to the subject drawings and documents. Otherwise, if CITY consents or approves the submission, CITY will execute a written modification of the Program Requirements.

ARTICLE IV

CONSTRUCTION OF THE PROJECT

Duties of Lessee. Lessee shall, or shall require Subcontractors engaged by it to perform the Work to, diligently pursue, perform and prosecute the Work to completion, in accordance with the Program Requirements, the accepted Project Schedule and the Construction Documents, the entire construction of the Project and shall, subject to Force Majeure Delays and adjustments

permitted by the terms of this Ground Lease, cause Substantial Completion to occur on or before the Scheduled Completion Date.

Award of Contracts. Before awarding any subcontracts, Lessee shall furnish to CITY in writing the names of the Persons (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work and the bidding package Lessee proposes to use. CITY will promptly reply to Lessee in writing stating whether or not the CITY has reasonable objection to any such proposed Person or bid package. Failure of CITY to reply within seven (7) days after such information has been furnished to and received by CITY shall constitute approval thereof. Upon the execution of such Subcontracts, Lessee shall provide copies thereof to CITY. Except as otherwise provided herein, amounts owing under subcontracts and other such Ground Leases, including costs, fees and expenses of Persons retained by Lessee or Lessees on behalf of Lessee in connection with the construction of the Project, shall be the responsibility of Lessee. Lessee shall require that Lessees and Persons performing the Work obtain the Permits and insurance required by this Ground Lease and the contracts to be obtained by them and shall provide CITY with copies of such Permits and the required insurance certificates.

Supervision of Construction. Lessee shall supervise and coordinate the construction of the Work so that the Project is constructed, equipped, furnished and completed in a good and workmanlike manner and in accordance with the terms of this Ground Lease. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the construction of the Work. Lessee shall enforce substantial compliance with the terms of the Ground Leases with the Design Architects, Subcontractors and Suppliers and require their performance substantially in accordance therewith. Lessee shall administer the subcontracts for the design and construction of the Work and require that Work be continuously and diligently performed in order to achieve Beneficial Occupancy on or before the scheduled completion date, as the same may be adjusted pursuant to the terms hereof. Without limiting the foregoing, Lessee shall or shall cause the Subcontractors to:

(a) coordinate and schedule the Work as it progresses and the inspections of the Work by consultants, review inspection reports, schedule and conduct preconstruction and construction meetings, review and revise estimates of construction costs, and implement courses of action when requirements of Subcontracts for the design or construction of the Work are not being fulfilled, including the termination of any Subcontractors which are not in substantial compliance with its Subcontract and has failed to cure such noncompliance;

(b) negotiate and prepare bid packages for any portion of the Work necessary for the award of Subcontracts as set forth herein, coordinate selections and procedures therefore and maintain harmonious labor relations;

(c) negotiate final payments and/or final settlements with all parties involved in the construction of the Work. Lessee shall commence, defend and settle in good faith such legal actions and proceedings concerning the design and construction of the Work (other than defense

of CITY in legal actions or proceedings in which CITY is a defendant, which defense shall be assumed by CITY's attorneys) as are necessary or required in the opinion of Lessee and retain counsel in connection therewith. If any claims or liens are filed with respect to the Project by Subconsultants, Subcontractors or Suppliers of Lessee, take such action as is necessary to cause the release, removal or bonding off thereof within fourteen (14) days of notice of the filing thereof;

(d) cause any defects in the construction of the Work or in the installation or operation of any equipment or fixtures therein to be corrected during construction and applicable warranty periods;

(e) hold weekly job meetings with all job-site personnel, including Subcontractors and Subconsultants, and the Design Architects, as appropriate and necessary, during the construction of the Project to review the progress of development of the Project and completion of the Work. CITY shall be given notice of and permitted to attend such meetings and any other meeting involving all or some of such parties. If requested by Lessee, CITY shall confer with Lessee regarding the need or appropriateness of CITY's attendance at a particular meeting; however, the foregoing shall not obligate CITY to attend nor prevent CITY from attending any such meeting(s). Lessee shall cause copies of minutes of any and all such meetings to be prepared and delivered to the participants and CITY;

(f) record the progress of the Project and submit written progress reports to CITY including information on each Subcontractor's work, as well as the entire Project, showing percentages of completion. Lessee shall keep a daily log containing a record of each Subcontractor's work on the site, number of workers, identification of equipment, Work accomplished, problems encountered and other similar relevant data as CITY may require.

(g) advise CITY of any delays or anticipated delays in meeting the Project Schedule and of the actual dates on which the various stages and construction indicated on the Project Schedule are started and completed;

(h) if construction of the Work does not progress in accordance with the dates required by the Project Schedule, as it may be adjusted pursuant to the terms of this Lease Agreement, or if it is unlikely that such dates will be met based on the then progress of the Work, Lessee must take reasonable steps to cause an acceleration of the Work by all available means including utilization of overtime, additional work crews and alternate material suppliers, at no cost to the CITY;

(i) maintain at the Project Site one record copy of all Subcontracts, Drawings, Specifications, addenda, Change Orders and other modifications, in good order and marked currently to record changes and selections made during construction, and in addition, approved shop drawings product data, samples and similar required submittals. Lessee shall make all such records available to the Design Architects and upon completion of the Project shall deliver them to CITY;

(j) arrange for the delivery, storage, protection and security of materials, systems and equipment ordered by Lessee that are part of the Work until such items are incorporated into the Project, unless the materials, systems or equipment are not delivered pursuant to Lessee's Scope of Work;

(k) comply and cooperate with, and cause the Subcontractors and Design Architects to comply and cooperate with the CITY's Rules;

(l) cooperate and facilitate (and require Subcontractors and Design Architects to cooperate and facilitate) in the orderly transition from construction to occupancy and operation (including, without limitation, delivery of all maintenance manuals, warranties and the like);

(m) supervise and coordinate the completion of "punch list" items and warranty work following Substantial Completion;

(n) during the Work's progress, require the plumbing, air conditioning, heating, ventilation, electrical, and mechanical Subcontractors to record on their field sets of drawings the exact locations, as installed, of all conduit, pipe, and duct lines whether concealed or exposed, which were otherwise not installed exactly as shown on the Contract Drawings. The Lessee shall also cause any changes to the permitted Drawing and Specifications to be noted on the As-built Drawings and Specifications. Each Drawing shall be noted "As Built" and shall bear the date and name of the Subcontractors that performed the work. CAD filed of the record drawings shall be updated by the Lessee to reflect their "As Built" condition. Lessee shall provide City with both a hard copy and digital copy of the "As Built" Drawings and Specifications; and

(o) Lessee shall provide City both digital and hard copies of all systems commissioning's and maintenance training associated with the Project.

Correction of Work. Upon notice from CITY that CITY reasonably determines that construction is not proceeding in accordance with the Construction Documents as they may be modified as permitted under this Ground Lease, Lessee shall cause any such nonconforming work to be re-executed by the party responsible therefore.

4.2 Construction Change Orders.

(a) CITY may, at any time and from time to time, by a written Change Order Request ("COR") cause changes in the Work. Such changes may include, but are not limited to, changes in the Construction Documents, the Schedule or the Program Requirements. The CITY, without invalidating this Ground Lease and without notice to surety, may order changes in the Project, or changes that result from other acts or occurrences as set forth elsewhere in this Ground Lease, the Work, consisting of additions, deletions, or other revisions ("Changes"). All Changes

shall be authorized by a Change Order, either a Bilateral Change Order or a Unilateral Change Order, signed by the CITY before the Change is implemented.

(b) In the event a COR would impact the Project Schedule Lessee shall deliver to CITY Lessee's written statement setting forth in detail the effect that such change would have on the Project Schedule, together with a statement of the known effect, if any, of all COR's to date on the Project Schedule ("Change Order Quotation").

(c) Upon receipt of any Change Order Quotation, CITY shall review such proposal. Upon completion of such review, CITY, at its sole discretion, shall have the option to (i) accept the Change Order Quotation, in which event the parties shall be deemed to have agreed to the Change Order Quotation, (ii) enter into negotiations with Lessee concerning any aspect of the Change Order Quotation, or (iii) reject the Change Order Quotation in writing, in which event the COR shall be deemed withdrawn and Lessee shall construct the Work pursuant to the Construction Documents without regard to such COR. Any failure of CITY to respond to a Change Order Quotation within seven (7) Days of delivery to CITY thereof shall be deemed disapproval of such Change Order Quotation and withdrawal of such COR. Upon CITY's acceptance of a Change Order Quotation, either as originally submitted or as modified with the Ground Lease of Lessee and CITY, Lessee shall cause the work required by such COR to be performed and the Project Schedule and the construction costs shall be adjusted as provided in the applicable Change Order Quotation.

(d) Lessee's signature on a Change Order shall constitute a full, final and complete waiver and settlement of any and all claims, demands, and causes of action that Lessee has or may have in the future arising out of or relating to the Change Order and the occurrences, acts, omissions, or events upon which the Change Order is based. No "reservation of rights" or other attempt by Lessee to reserve rights arising from the Change Order shall be effective unless CITY and Lessee shall both agree in writing to the reservation within the four corners of the Change Order. This is defined as a "Bilateral Change Order." A Bilateral Change Order will be used to modify the Ground Lease adjustments to Milestones for the Change requires authorization by CITY Council.

(e) A "Unilateral Change Order" is an order to the Lessee issued by the CITY after the execution of this Ground Lease implementing a Change upon which the CITY and Lessee have not reached full agreement. A Unilateral Change Order will provide the scope of the Change. If the CITY and the Lessee cannot agree to the terms of a Change Order Request, the CITY shall have the right to issue a Unilateral Change Order directing the Lessee to proceed with the Change and the Lessee shall promptly proceed with implementing the Change.

(f) Change Notice Requests. If at any time Lessee believes that acts or omissions of CITY or its designated representatives constitute a change to the Work not covered by a Change Notice, Lessee shall within seven (7) calendar days after such act or omission submit a written Change Notice Request explaining in detail the basis for the request. If Lessee intends to assert a

Claim under this Clause, it must, within seven (7) calendar days after receipt of a Change Notice or at the time of submission of a Change Notice Request provide written notification of such intent.

(g) If a Change Order Request or Change Notice Request is rejected by the CITY Representative, and Lessee intends to assert a Claim, Lessee must do so in strict compliance with the requirements set forth in the Dispute Resolution Section of the Ground Lease Agreement .

4.3 Payment and Performance Bonds.

Bonding Requirements. Lessee shall, upon award of this Ground Lease and prior to the commencement of construction, cause the Lessee's General Contractor to furnish Payment and Performance Bonds in the amount of one hundred (100%) percent of the value of construction with the CITY named as a dual obligee. Such bonds shall be on the form attached as **Exhibit D-1**, issued by a surety company meeting the requirements set forth below in the penal sum equal to the value of construction as a guarantee of the full and faithful performance of the Services in accordance with the terms and provisions of this Ground Lease, of the discharge of all debts of the Lessee to its employees, Subconsultants, Subcontractors and Suppliers and in compliance with Applicable Law and **Exhibit D**. The bonding requirement may be accomplished through the Lessee's General Contractor so long as the CITY is named as a dual obligee. All bonds shall be issued in a form and by a surety acceptable to CITY and contain the surety's waiver of notice of all contract changes made pursuant to this Ground Lease. The Lessee and its surety agree that the penal sum of the bonds will be adjusted in the event of a Change in order that the penal sums of the bonds is always equal to the value of construction. The bonds shall be subject to the approval of CITY and shall be in a form satisfactory to CITY. Lessee shall provide CITY with evidence of the bonds if and whenever requested by CITY. The bonds shall be submitted and will be dated by CITY prior to commencement of construction.

Surety Requirement. Bonds shall be executed by a corporate surety satisfactory to CITY and meet the following minimum financial security requirements: (i) surety shall have a current Best's rating of not less than A-, and current Best's financial size category of not less than Class IX; (ii) surety shall be authorized by the Georgia Insurance Commissioner pursuant to a valid and current Certificate of Authority to conduct and transact surety business in the State of Georgia; and (iii) surety shall be a U.S. Treasury Circular 570 listed company. The surety shall appoint an agent for service in Atlanta, Georgia, upon whom all notices shall be served. The person executing the bonds on behalf of the surety shall file with the bonds a general power of attorney unlimited as to amount and type of bonds covered by such power of attorney, and certified to by an official of the surety.

Changes in Bond. In the event the value of construction is changed, Lessee shall, within ten (10) days, deliver to CITY an amendment or rider to the bond increasing the final amounts of the bond to reflect the changed construction value or new bond shall be furnished in the final amount of the new value of construction. These bond(s) shall remain in effect through the period of performance, including the period of warranty, and as required under Georgia law.

Limitation on Effect of Bonds. The requirements contained in this Ground Lease as to forms and limits of the required bonds, as well as CITY's approval of bond coverage to be maintained by Lessee, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Lessee under this Ground Lease.

4.4 Delays and Extensions of Time.

Extension of Time For Performing. If Lessee is delayed in the commencement or progress of the Services wholly or primarily because of a Force Majeure Event or by other causes that CITY in its sole discretion may determine justify an extension of time, then Lessee's deadline for performing the specifically affected Work shall be extended for such reasonable time as CITY may determine, but only: (i) if and to the extent such event or circumstance is beyond the reasonable control of Lessee; (ii) if and to the extent Lessee shall have taken all reasonable precautions to prevent delays associated with any such event or circumstance if the possibility of such event or circumstance was actually known or under the circumstances reasonably should have been known in advance to Lessee; (iii) if and to the extent such event or circumstance is not caused by Lessee's or Lessee's agents', materialmen's, Qualified Subconsultants', Subcontractors' or employees' acts or omissions; (iv) if and to the extent Lessee shall have taken all reasonable actions to mitigate the delays resulting from such event or circumstance; (v) if and to the extent that such event caused a delay of material activities associated with the Project; and (vi) if Lessee strictly complied with the requirements this Section.

Notice of Force Majeure. If Lessee is justifiably (as set forth above) delayed in performing because of a Force Majeure Event, Lessee shall, as soon as practicable ***and to the extent reasonably possible within*** twenty-four (24) hours after its awareness of the likely effects of the Force Majeure Event, provide to CITY written notice of the Force Majeure Event and shall, within seven (7) days ***or within a mutually agreed time period*** after the Force Majeure Event has ended, provide to CITY a written description of the impact caused on the performance of the Work by the Force Majeure Event, its steps for avoiding Material Adverse Effects from the Force Majeure Event, its actions to mitigate Material Adverse Effects caused by the Force Majeure Event and its steps for brining Lessee back into compliance with the requirements of this Ground Lease.

Sole Remedy. For delays in the performance of Services justifiably caused by a Force Majeure Event, an extension in the time for completing the reasonably affected Services shall be Lessee's sole and exclusive remedy for any such delay. During the Design and Construction of the Sustainability Initiative, Lessee shall take commercially reasonable steps to avoid or minimize the potential effects of any Force Majeure Event.

No Damage for Delay. Lessee agrees that no monetary recovery may be claimed or obtained by Lessee in the event of a delay caused by Force Majeure Events or owner caused delays.

4.5 Liquidated Damages.

(a) Lessee and CITY recognize that time is of the essence of this Ground Lease and that CITY will suffer financial loss if the Work is not Substantially Completed by the Scheduled Completion Date, as the same may be extended in accordance with the provisions of this Ground Lease. CITY and Lessee also recognize the delays, expense and difficulties involved in proving, in court proceedings, or otherwise, the actual loss suffered by CITY if the Work is not Substantially Completed by such date.

(b) If Lessee at any time believes that it is likely to miss a Deadline or Milestone, Lessee shall promptly notify CITY of the likely delay and the likely extent of the delay and shall make diligent efforts to avoid or minimize the delay or any Material Adverse Effects resulting from the delay. If a Deliverable or Work is not performed to completion in accordance with all of the requirements of this Ground Lease prior to any applicable Deadline, Lessee shall pay to CITY as liquidated damages an amount equal to the amount specified in **Exhibit I** for each day during which Lessee has failed timely to meet such Deadline or Specification.

(c) The Parties further agree that the liquidated damages provided herein shall be the sole and exclusive remedy for the unexcused failure of the Lessee to meet any Deadlines or Milestones, provided that the failure did not result in a For Cause termination of the entire Ground Lease Agreement. The exclusivity of liquidated damages for CITY damages from delay in no way limits CITY's legal and contractual rights for all other types of damages that may arise under this Ground Lease.

ARTICLE V

PREVENTION OF LIENS

5.1 Liens. The Lessee agrees to keep the Work, the Job Site, the Project and the CITY's property free and clear of all liens related to labor and materials furnished in connection with the Work. The Payment Bond is intended to secure payment for labor and materials furnished in connection with the Work and the CITY's public property is not subject to liens.

5.2 Prevention of Liens and Encumbrances. Lessee shall take all actions within its control, including, without limitation, the execution, acknowledgement, delivery and filing of such waivers, releases and other documents, to prevent any mechanics' or materialmen's liens or any other liens or encumbrances from being filed on or in connection with any real property or improvements owned or leased by CITY as a result of or in connection with Lessee's performance or any other act or omission of Lessee or any Subconsultant. If any such lien or encumbrance is filed in connection with or placed on such property or improvements and if Lessee does not cause the lien or encumbrance to be fully and effectively released and discharged, or does not cause the lien or encumbrance to be bonded over in a manner acceptable to CITY, CITY shall be entitled, without prejudice to any other rights or remedies available to it, to pay directly to the holder of the lien or encumbrance all sums necessary to obtain the immediate release and discharge such lien.

As each subcontractor completes its Work, Lessee will submit executed lien releases to the CITY for each subcontractor in the form of **Exhibit C, Attachment 3**.

5.3 Licenses and Permits. Lessee shall obtain, maintain and enforce all licenses necessary for Lessee's execution of the Work and the building permit and renewals thereof and shall cause to be paid all fees and taxes which may be due and owing from time to time to federal, state and municipal authorities incidental to the Work to be provided by Lessee under this Ground Lease.

5.4 Permits. Lessee shall obtain, at its expense, all permits, licenses, certifications, clearances and approvals ("**Permits**") desirable or necessary for the performance and completion of the Work in accordance with this Ground Lease and Applicable Law except for those Permits either obtained by the CITY on behalf of or covering Lessee. Lessee shall submit to CITY, before commencing the Services, evidence of all required Permits.

ARTICLE VI

INSURANCE AND BONDING

6.1 Liability Insurance. Lessee shall purchase from and maintain in a company or companies lawfully authorized to do business in the State of Georgia for the period this Ground Lease is in effect, the insurance coverages set forth in **Exhibit D**.

6.2 Waiver. Neither CITY nor Lessee shall be liable to the other party or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to property or injury to persons, or any resulting loss of income, or losses under worker's compe, to anynsation laws and benefits, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees, if and to the extent any such loss or damage is covered by insurance benefiting the party suffering such loss or damage.

ARTICLE VII

WARRANTY

7.1 Prohibition Against Assignment by Lessee. Lessee shall not transfer or attempt to transfer this Ground Lease or any rights herein or delegate its responsibilities hereunder, to any other Entity without the express written approval from the City, and any such transfer or delegation or attempt to transfer or delegation shall be void and shall constitute a default under the provisions of this Ground Lease.

7.2 Warranty. Lessee warrants to CITY that all materials and equipment furnished under this Ground Lease will be of good quality and new and of recent manufacture, unless otherwise required or permitted by the Construction Documents; that the Work will be free from defects not inherent in the quality required or permitted; and that the Work will conform with the requirements of the Construction Documents, including the Protocol Acceptance Testing. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. This warranty shall be in addition to and not in limitation of any other warranty or remedy prescribed by law or the Construction Documents. Lessee shall indemnify, defend and hold CITY harmless from all claims, losses, damages and expenses (including attorneys' fees or court costs) arising out of any failure of Lessee to perform warranty work within any applicable time period specified in the Construction Documents, or, if no such time period is specified, within a reasonable period of time, and shall pay to CITY all such losses, damages and expenses (including attorneys' fees, court or mediation costs) as may be incurred by CITY as a result of such failure, provided that, with respect to manufacturers' warranties, the failure occurs within the applicable trade Subconsultant's warranty period stipulated in the Specifications.

7.3 General Representations and Warranties of Lessee. In addition to any other representations and warranties of Lessee set forth in this Ground Lease, Lessee represents and warrants to CITY, as follows: (i) neither the execution, delivery nor performance of this Ground Lease by Lessee violates or conflicts with, or will violate or conflict with, any provision of Lessee's organizational or governing documents or instruments, any Ground Lease or other instrument or restriction to which Lessee is a party or by which Lessee or its property is bound or encumbered, or any Applicable Laws; (ii) the execution, delivery and performance of this Ground Lease has been duly authorized by Lessee's governing body and by any other necessary legal actions of Lessee, and this Ground Lease constitutes the valid and binding obligation of Lessee, enforceable in accordance with its terms, except as such enforceability may be limited by general principles of equity or bankruptcy, insolvency, reorganization or similar laws affecting the rights of creditors generally; (iii) Lessee is licensed, certified and otherwise authorized to perform the Work, and Lessee is not, with respect to the operation of its business or its performance of the Services, required to hold or maintain any license, permit, certification or other authorization that it does not currently hold and maintain; (iv) there are no actions, suits, claims or proceedings (pending or threatened) against, by, or affecting Lessee in any court or before any arbitrator or governmental agency or authority that may have an adverse effect on Lessee's assets, its financial condition, the operation of its business or its ability to perform its obligations under this Ground Lease; (v) Lessee has not been charged with, and to the best knowledge of Lessee, is not under investigation with respect to any charge concerning any violation of any provision of any Applicable Law with respect to its business, including, without limitation, those laws and regulations concerning the Services; (vi) all of the information provided by Lessee in its Response to the RFP was true, complete and accurate as of the final date of the date when the Response was complete and provided to CITY; (vii) Lessee (A) has, and each of Lessee's employees and Subconsultants that will perform the Services has, the necessary knowledge, skills, experience, qualifications, rights and resources to perform the Services in accordance with this Ground Lease, and (B) has successfully performed the Services or services

that are substantially equivalent to the facilities, nor is the Lessee an affiliate of a high cost lender or a predatory lender, as defined by CITY of Atlanta Code Section 58-102.

7.4 Services Warranties of Lessee. Lessee warrants to CITY that: (i) all Deliverables and the System itself, once installed and implemented, shall meet or exceed all Specifications; (ii) it shall perform all Services in a professional, first-class and expert manner and in accordance with the highest standards of its industry; (iii) all work shall conform to the highest standards of the engineering observed on successfully completed, large, complex projects; (iv) all Materials used by it in the Project and all Deliverables shall be of clear title, not subject to any lien or encumbrance and of the most suitable grade of their respective kinds for their intended uses, shall be free of any defect in equipment, material, design or workmanship and shall be of merchantable quality and fit for the purposes for which they are intended by CITY; and (v) any Software and other technology or other Deliverable furnished to CITY by Lessee or used in connection with the Services shall be non-infringing on the Intellectual Property Rights of any third party wherever located.

7.5 Subcontractors. All Subcontractors', manufacturers', and suppliers' express or implied warranties and guarantees respecting any part of the Services and any Materials used therein shall be obtained and enforced by Lessee for the benefit of CITY without the necessity of separate transfer or assignment thereof, provided that, if directed by CITY Representative, Lessee shall assign such warranties and guarantees in writing to CITY. CITY may bring suit at its expense to enforce a Subcontractor's or manufacturer's warranty.

7.6 No Limitation. This warranty shall not limit CITY's rights with respect to latent defects.

ARTICLE VIII

TESTS AND INSPECTIONS; UNCOVERING AND CORRECTION OF WORK

8.1 Tests And Inspections.

Access of CITY. CITY shall at all times have the right to inspect Lessee in its preparation for or performance of the Services or delivery of the Deliverables, including for purposes of assessing (i) work quality, (ii) conformity of Lessee's work with the Specifications, and (iii) Lessee's conformity with its representations, warranties and covenants in the Ground Lease. This inspection right applies to all Lessee facilities directly or indirectly involved in the Project, all books and records relating to it and all personnel and Subconsultants involved in the Project. Lessee shall, without additional charge, provide reasonable facilities and assistance for the safety and convenience of the CITY's representatives in connection with such inspections. CITY's inspection shall not relieve Lessee of any responsibilities under this Ground Lease or constitute CITY's "acceptance" of any Services or Deliverables.

(a) Meet the requirements of the Quality Control Program attached as **Exhibit C, Attachment 2.**

(b) If the Design Architects, CITY or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included above, Lessee will, upon written instruction from CITY, make arrangements for such additional testing, inspection or approval by an entity acceptable to CITY, and Lessee shall give timely notice to CITY and the Design Architects of when and where tests and inspections are to be made so CITY may observe such procedures. CITY shall bear such costs except as provided below.

(i) If CITY's and the Design Architects' observation of any inspection or testing undertaken pursuant to this Article reveals a failure in any one of a number of identical or similar items or elements incorporated in the Work to comply with (1) the requirements of the Construction Documents or (2) with respect to the performance of the Work, with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, CITY will have the authority to order inspection and/or testing of such items or elements of the Work, or of a representative number of such items or elements of the Work, as it may in its reasonable opinion consider necessary or advisable, and Lessee shall, unless such inspection or testing reveals no failure to comply or such failure is as a result of defects in the Drawings and Specifications which Lessee did not or could not have known, bear all costs thereof, including the Architect's additional services, if any are required, made necessary thereby.

(ii) The cost of testing services related to remedial operations performed to correct deficiencies in the Work shall be borne by Lessee. If, during the course of the performance of any testing, inspection, control, balancing, adjusting, or similar work by Lessee or any Lessee, it is the reasonable opinion of the Design Architects and CITY that that Lessee or any Lessee has failed to perform such work in a satisfactory manner, Lessee shall retain the services of a testing laboratory or service organization which is satisfactory to CITY for the evaluation and testing of such Work. If the Work is found to be performed in a satisfactory manner, CITY shall reimburse Lessee for its out-of-pocket costs for such testing or service. If it is found to be performed in an unsatisfactory manner, Lessee will bear all costs and expenses.

(c) In connection with testing and inspection services performed at the expense of CITY, Lessee shall provide samples of materials and/or elements of the Work required as test specimens and shall provide incidental labor and facilities at the Site reasonably required in support of such services.

8.2 Uncovering Of Work. If a portion of the Work is covered contrary to requirements specifically expressed in the Construction Documents, it must, if required in writing CITY, be uncovered for observation by CITY and be replaced without change in the Scheduled Completion Date. If a portion of the Work has been covered in accordance with the Construction Documents

which CITY has not specifically requested to observe prior to its being covered, CITY may request to see such Work and it shall be uncovered by Lessee.

8.3 Correction Of Work. Lessee shall promptly correct Work rejected by CITY or failing to conform to the requirements of the Construction Documents whether or not fabricated, installed or completed. Lessee shall pay for correcting such rejected Work, including additional testing and inspections and any cost, loss, or damages to CITY resulting from such failure or defect. This obligation shall survive termination of this Ground Lease. If, within one (1) year after the Substantial Completion, or within the applicable time period specified in the warranties established above or in an applicable special warranty required by the Construction Documents, any of the Work is found to be defective or not in accordance with the Construction Documents, Lessee shall correct it promptly after receipt of written notice from CITY to do so unless CITY has previously given Lessee a written acceptance of such condition. This obligation shall survive acceptance of the Work under this Ground Lease and termination of the Ground Lease. CITY shall give such notice promptly after discovery of the condition. Lessee shall remove from the Site portions of the Work which are not in accordance with the requirements of the Construction Documents and are neither corrected by Lessee nor accepted by CITY. If Lessee fails to commence correction of nonconforming Work within ten (10) working days after its receipt of CITY's notice to correct such Work, subject to availability of materials, and thereafter diligently pursue such correction to completion, CITY may correct it by any commercially reasonable means. If Lessee does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from CITY, CITY may remove it and may store the salvable materials or equipment at Lessee's expense. If Lessee does not pay costs of such removal and storage within ten (10) working days after written notice, CITY may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by Lessee. If such proceeds of sale do not cover costs which Lessee should have borne, the Ground Lease Sum shall be reduced by the deficiency. If payments then or thereafter due Lessee are not sufficient to cover such amount, Lessee shall pay the difference to CITY. Lessee shall pay for the cost of making good all work of CITY or its separate Lessees destroyed or damaged by such correction or removal. Nothing contained in this Ground Lease shall be construed to establish a period of limitation with respect to other obligations which Lessee might have under the Construction Documents. Establishment of the time period of one (1) year as described in this Subparagraph relates only to the specific obligation of Lessee to correct the Work, and has no relationship to the time within which the obligation to comply with the Construction Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Lessee's liability with respect to Lessee's obligations other than specifically to correct the Work. If CITY prefers to accept Work which is not in accordance with the requirements of the Construction Documents, CITY may do so instead of requiring its removal and correction.

8.4 Non-Exclusive Remedies. The remedies set forth in this Article shall be in addition to all other remedies of CITY under the Construction Documents, at law or in equity.

ARTICLE IX

HAZARDOUS MATERIALS AND DIFFERING SITE CONDITIONS

9.1 Period. The terms enumerated below are applicable to the entire period of the Ground Lease, and all Construction/renovations/refurbishments/or improvements of the facility, or the operation and maintenance of the Project.

9.2 Limitation on Use of Hazardous Materials. Lessee may use Hazardous Materials in the Project only if this use is absolutely necessary and CITY has been notified at least thirty (30) days prior to the use of the Hazardous Materials. Any Hazardous Materials used by Lessee, and any containers or Materials that come into contact with the Hazardous Materials, shall be processed, distributed, treated, stored, placed, removed, transported and disposed of by Lessee in accordance with all Applicable Laws. Lessee will not transport to, or store on, CITY's property or the Jobsite any Hazardous Materials not intended for the Project.

9.2 Material Safety Data Sheet Requirement. Lessee shall submit a Material Safety Data Sheet to CITY two (2) days before initial transport to, or use on, CITY's property or the Jobsite of any Hazardous Materials. Lessee shall insert these provisions relating to Material Safety Data Sheets in all subcontracts, at any tier, for delivery, transport, or use of Hazardous Materials on CITY's property or the Jobsite in connection with this Ground Lease.

9.3 Notice of toxic or Hazardous Materials. In the event the Lessee encounters on the Jobsite material reasonably believed to be toxic or Hazardous Materials or waste, which has not been addressed in this Ground Lease, the Lessee will immediately stop work in the affected area and notify the CITY in writing of the condition. Pending receipt of written instructions from the CITY, the Lessee will not resume work in the affected area.

9.4 Information on Subsurface Conditions. Lessee is required to make investigations of subsurface conditions in the Jobsite, such investigations are made by the Lessee for the purpose of study and design. If the CITY provides any geotechnical information, neither CITY nor its agents, representatives and consultants assume any responsibility whatsoever in respect to the sufficiency or accuracy of any investigations, the records thereof, or of the interpretations set forth and there is no warranty or guarantee, either express or implied, that the conditions indicated by such investigations or records thereof are representative of those existing throughout such areas, or any part thereof, or that unforeseen developments may not occur, or that materials other than or in proportions different from those indicated may not be encountered.

EXHIBIT C

ATTACHMENT 1

SCHEDULE REQUIREMENTS

1. General Requirements

- 1.1. The Work under this Ground Lease shall be planned, scheduled, executed, reported and accomplished using the Precedence Diagramming Critical Path Method (hereinafter referred to as CPM), in calendar days, unless otherwise specifically provided in the Ground Lease Documents.
- 1.2. Lessee shall have within its employ or under contract, throughout the execution of the Work under this Ground Lease, personnel with expertise in CPM scheduling and experience with the specified scheduling program so as to ensure its effective and efficient performance under this section.
- 1.3. The Project Schedule shall be computerized by the Lessee utilizing the latest version of Oracle Primavera P6, hereinafter referred to as Primavera. It is required that the Lessee shall have sufficient capabilities to perform this Work. Any and all costs incurred by the Lessee in researching and/or educating its personnel in CPM or Primavera are to be borne by the Lessee.
- 1.4. The primary objectives of the requirements of this section are: (a) to insure adequate planning and execution of the Work by Lessee; (b) to assist Authorized Representative in evaluating progress of the Work; (c) to provide for optimum coordination by Lessee of its trades, Subcontractors, and Suppliers, and of its Work with the work or services provided by any separate Contractors; (d) to permit the timely prediction or detection of events or occurrences which may affect the timely prosecution of the Work; (e) to provide a mechanism or tool for use by the Authorized Representative, and Lessee in determining and monitoring any actions of the Lessee which may be required in order to comply with the requirements of the Ground Lease Documents relating to the completion of the various portions of the Work by the Ground Lease Time specified in the Ground Lease Documents.
- 1.5. Lessee is responsible for determining the sequence of activities, the time estimates for the detailed construction activities and the means, methods, techniques and procedures to be employed. The Project Schedule shall represent the Lessee's best judgment of how it will prosecute the Work in compliance with the Ground Lease requirements. Lessee shall ensure that the Project Schedule is current and accurate and is properly and timely monitored, updated and revised as Project conditions may require and as required by the Ground Lease Documents.
- 1.6. Lessee shall provide the basic data relating to activities, durations, Specified Ground Lease milestones, and sequences to Authorized Representative as part of Lessee's Draft Baseline Schedule and Final Baseline Schedule submittal, discussed later in this Exhibit. This data shall reflect the Lessee's actual plan for the Project and shall fully comply with all requirements of the Ground Lease Documents and this Exhibit.
- 1.7. At the discretion of the Authorized Representative, Lessee shall coordinate and interface with others performing work for the CITY in the same area and shall coordinate its activities with all parties including the Owner, Consultants, Suppliers and other Contractors.

- 1.8. Lessee shall include in the Project Schedule all interface points with others. These points shall be in the form of Start Milestones for deliverables due to the Lessee from others and as Finish Milestones for deliverables that Lessee must supply to others.
- 1.9. Should Lessee intend or plan to complete the Work, or any portion thereof, earlier than any applicable Specified Milestone Date or the Ground Lease Time, Lessee shall give timely and reasonable Notice of this fact to Authorized Representative. The CITY shall have the sole discretion to accept or reject such early completion plan by Lessee. Schedule improvement is always encouraged whenever possible. However, since interface with other parties performing work at Hartsfield-Jackson Atlanta International Airport (ATL) is necessary, the CITY and its representatives shall have no duty or obligation to agree to, or to cooperate with Lessee regarding any early completion plan or proposal by Lessee and shall not be liable for any damages of Lessee because of the rejection by the CITY of said plan.

2. Schedule Development, Submittal and Approval

- 2.1. Development of the Project Schedule is a multi-step process with each step requiring defined information and input of project team members. The development process includes the Schedule Orientation Session, Draft Schedule, and Final Schedule.
- 2.2. **Schedule Orientation Session:** Lessee shall, upon notification from the Authorized Representative, attend a schedule orientation session relating to the Schedules and Reports requirements for this Project. The schedule orientation session is designed to review in detail the objectives of the Schedules and Reports requirements. Lessee shall arrange for its Project Manager, Superintendent, and Project Scheduler to attend the schedule orientation session. The following items will be discussed during the orientation session: (a) The procedures and requirements for the preparation of the Project Schedule; (b) how the requirements of the Ground Lease Documents will be monitored and enforced by the Authorized Representative (c) long-lead items and time requirements for the Work by Subcontractors will be identified and included in the schedule.
- 2.3. The Lessee shall provide the Project Schedule in a format that is acceptable to Authorized Representative.
- 2.4. **Draft Baseline Schedule:** Within fifteen (15) calendar days of the schedule orientation session or NTP the Lessee shall complete and submit a draft of its Project Schedule (Draft Baseline Schedule).
- 2.5. The Draft Baseline Schedule shall represent the Lessee's best judgment and intended plan for completion of the Work in compliance with Ground Lease Milestone Dates in the Ground Lease Documents. The Ground Lease Milestone Dates shall be included in the Draft Baseline Schedule as zero duration finish milestones. The Draft Baseline Schedule shall take into account all foreseeable activities to be accomplished by other interfacing Lessees, interface dates with utility owners, CITY's operations and others.
- 2.6. The Authorized Representative shall have the right to require the Lessee to modify any Lessee data or any portion of the Lessee's Draft Baseline Schedule to comply as required herein, with Lessee bearing the expense thereof, which the Authorized Representative reasonably determines to be: (a) impracticable, (b) based upon erroneous calculations or estimates, (c) unreasonable, (d) required in order to ensure proper coordination by Lessee of the Work of its Subcontractors and with the work or services being provided by other interfacing Contractors, (e) necessary to avoid undue interference with the CITY's operations or those of any utility owners or adjoining property owners, (f) necessary to ensure completion of the Work by the Ground Lease Milestone Dates set forth in the Ground Lease Documents, (g) required in order for Lessee to comply with the requirements of Paragraph 1.8 hereof or any other

requirements of the Ground Lease Documents or this Exhibit, (h) not in accordance with the Lessee's actual operations, unless the revision or modification will change the original scope of Work.

- 2.7. **Final Baseline Schedule:** No later than fourteen (14) calendar days after the Draft Baseline Schedule is returned with comments to the Lessee by the Authorized Representative, the Lessee shall complete and submit the Final Baseline Schedule to the Authorized Representative for acceptance.
- 2.8. Upon review of the Final Baseline Schedule by the Authorized Representative, the Lessee will be notified in writing as to acceptance, reasons for rejection, or any revisions required.
- 2.9. The accepted Final Baseline Schedule will be “frozen” and shall become the **“Project Schedule”** for the Work and shall be used to monitor and record progress and evaluate revisions. This Final Baseline Schedule shall be established as the target schedule for the Ground Lease and shall not be changed, altered or revised. A copy of the accepted Final Baseline Schedule shall be used to establish progress reporting in accordance with Section 4 of this Exhibit. The CITY will not recognize or accept any other schedule.
- 2.10. Lessee shall include, as part of the Final Baseline Schedule submittal to the Authorized Representative, a narrative report indicating anticipated allocation by Lessee of the following resources and work shifts for each activity which it proposes to be utilized on the Project, (a) Labor resources, (b) Equipment resources, and (c) Whether it proposes the Work to be performed on single, double or triple shifts, and whether it is to be done on a 5, 6, or 7-day work week basis.

3. Schedule Content and Format

- 3.1. Except for non-construction activities such as, procurement, delivery, or submittal development, Lessee shall differentiate activities of the schedule so that no single activity shown has a duration longer than fifteen (15) calendar days unless the Authorized Representative, in its sole discretion, shall approve a longer duration for certain activities.
- 3.2. The Draft Baseline Schedule and Final Baseline Schedule submittals shall consist of two (2) copies of the Primavera generated bar chart schedule, representing all activities which are part of the Lessee's plan on 11" x 17" paper, in color, and a Primavera generated backup XER file of the schedule on electronic media acceptable to the Authorized Representative. The submittal shall also include the narrative report.
- 3.3. The Draft Baseline Schedule and Final Baseline Schedule submittals must contain or be able to demonstrate that the following items have been addressed: (a) Project name, WBS, Ground Lease and Task Order numbers (if applicable); (b) Lessee name; (c) Revision or edition number; (d) activities of completed Work ready for use by next trade, CITY, etc.; (e) activities relating to different areas of responsibility such as subcontracted Work which is distinctly separated from that being done by the Lessee directly; (f) distinct and identifiable subdivisions of Work such as structural slabs, beams, columns; (g) locations of Work within the Project that necessitates different times or crews to perform; (h) outage schedules for existing utility services that will be interrupted during the performance of the Work; (i) acquisition and installation of equipment and materials supplied and/or installed by CITY or separate Contractors; (j) material to be stored on site; (k) Ground Lease Milestone Dates, (l) procurement of long lead items and (m) QA & QC Activities.
- 3.4. For all major equipment and materials to be fabricated or supplied for the Project, the Final Baseline Schedule shall show a sequence of activities including, (a) preparation of shop drawings and sample

submissions, (b) a minimum of ten (10) calendar days for the DOA's review of shop drawings and samples or such time as specified in the Ground Lease Documents, (c) shop fabrication, delivery and storage; (d) erection; and, (e) testing of equipment and materials.

- 3.5. The Final Baseline Schedule shall include late completion dates for the Work that is no later than the required Ground Lease Milestone Dates. The bar chart submittal shall be drawn based upon the early start dates of activities shown on the graphic.
- 3.6. Lessee shall identify the activities which constitute the controlling operations or critical path of the schedule. No more than 30 % of the activities shall be critical. Critical is defined as total float less than one (1) calendar day.
- 3.7. All activity durations shall be given in calendar days.

4. Updating of Project Schedule/Progress Reports

- 4.1. At least once a month, the Lessee shall arrange for its Project Manager and Superintendent to meet at the Project site with the Authorized Representative to review Lessee's updated Project Schedule as prepared by Lessee. Said update shall show up-to-date and accurate progress data and shall be based upon Lessee's best judgment; and said update shall be prepared by Lessee in consultation with all principal Subcontractors and Suppliers. The Lessee shall also submit with the each update an electronic copy, XER file, of the updated Project Schedule along with one (1) copy of the schedule on 11" x 17" paper.
- 4.2. Lessee shall adjust the data date ("as of date") to reflect the current update period as required by the Authorized Representative. The required monthly data date shall be the last Friday of every month. This shall also be consistent with the cutoff for the application for payment.
- 4.3. The updated Project Schedule shall show activity commencement and completion dates for each activity and remaining durations in calendar days.
- 4.4. **Monthly Progress Report:** Lessee shall submit a narrative report which shall include, but not be limited to, a description of problem areas, current and anticipated delaying factors and their impact, explanations of corrective actions planned or taken, any newly planned activities or changes in sequence and proposed logic for a Recovery Schedule, if required, as further described herein. The report shall also include the updated Project Schedule updated as of the last Friday of the month and a narrative describing actual Work accomplished during the reporting period.
- 4.5. **Weekly Progress Report:** A rolling four-week detailed schedule showing, by day, one week of actual progress and a three-week look-ahead forecast showing all activities for that period. Variation from approved schedules and plans shall be noted and rationalized.

5. Recovery Schedule

- 5.1. Should the updated Project Schedule at any time during Lessee's performance, show in the sole opinion of the Authorized Representative, that the Lessee is fourteen (14) or more calendar days behind schedule for any Ground Lease Milestone Date, or should Lessee be required to undertake actions under this Section, the Lessee shall prepare a Recovery Schedule at no additional cost to the CITY (unless the Owner is solely responsible for the event or occurrence which has caused the schedule slippage) explaining and displaying how Lessee intends to reschedule its Work in order to regain compliance with the Project Schedule during the immediate subsequent pay period.

- 5.2. If the Lessee believes that all of the lost time can be recovered within thirty (30) days, the Lessee will be permitted to prepare a Recovery Schedule as set forth below. However, if the Lessee believes it will take more than thirty (30) calendar days to recover all of the lost time, it shall prepare and submit a request for revision to the "Baseline Project Schedule" and comply with all of the requirements of a Schedule Revision as set forth in Section 7 of this Exhibit. If Liquidated Damages are applicable to this Ground Lease/Task Order, a revision to the "Baseline Project Schedule" will not change the accrual or assessment of Liquidated Damages unless, in the sole opinion of the Authorized Representative, a revision of the Liquidated Damages terms and conditions is warranted.
- 5.2.1. The Lessee shall prepare and submit to the Owner's Representative a one-month maximum duration Recovery Schedule incorporating the best available information from Subcontractors and others which will permit a return to the original accepted "Baseline Project Schedule" at the earliest possible time. The Lessee shall prepare a Recovery Schedule to same level of detail as the originally accepted "Baseline Project Schedule" for a maximum duration of one month. This Recovery Schedule shall be prepared in coordination with other separate Lessees on the Project and shall not alter Lessee Milestone Dates.
- 5.2.2. Within two (2) working days after submission of Recovery Schedule to the Authorized Representative, the Lessee shall participate in a conference with the Authorized Representative to review and evaluate the Recovery Schedule. Within two (2) working days of conference, the Lessee shall submit the revisions necessitated by the review for the Authorized Representative's review and acceptance. The Lessee shall use the approved Recovery Schedule as its plan for returning to the original accepted "Baseline Project Schedule".
- 5.2.3. During the period of time that the Recovery Schedule is in force, the Lessee shall prepare and submit to the Authorized Representative weekly updates and shall confer continuously with the Authorized Representative to assess the effectiveness of the Recovery Schedule. As a result of this conference, the Authorized Representative will direct the Lessee as follows:
- 5.2.3.1. If the Authorized Representative determines the Lessee is still behind schedule, the Authorized Representative will direct the Lessee as to a plan of action regarding the Recovery Schedule. However, nothing herein shall limit in any way the rights and remedies of the CITY as provided elsewhere in the Ground Lease Documents; or
- 5.2.3.2. If the Authorized Representative determines the Lessee has successfully complied with provisions of the Recovery Schedule, the Authorized Representative will direct the Lessee to return to the use of the approved Project Schedule.

6. Time Extensions

- 6.1. The Lessee is responsible for requesting time extensions for time impacts that, in the opinion of the Lessee, impact the critical path of the current schedule update. Written notices of time impacts shall be submitted to the Authorized Representative by the Lessee within ten (10) calendar days of the occurrence of the event which caused the impact and in accord with the requirements of this Exhibit.
- 6.2. Failure to request time or provide the required mitigation plan within the required ten (10) calendar days will result in Lessee waiving its right to a time extension and cost to mitigate the delay.
- 6.3. No time will be granted under this Ground Lease for cumulative effect of changes.
- 6.4. The CITY will not be obligated to consider any time extension request unless requirements of this Exhibit are complied with.

- 6.5. Failure of the Lessee to perform in accordance with the current schedule update shall not be excused by submittal of time extension requests.

7. Schedule Revisions

- 7.1. Schedule Revisions, as defined herein, shall refer to modifications made to activities in the Accepted Baseline Project Schedule in any of the following items: (a) Activity Original Duration; (b) changes in logical connections between activities; (c) changes in imposed constraints; (e) changes to activity descriptions.
- 7.2. Should Lessee desire to or be otherwise required under the Ground Lease Documents to make modifications or changes in its method of operation, its sequence of Work, or the durations of the activities in its Project Schedule, it shall do so in accordance with the requirements of this Attachment, Schedule Requirements, and the Ground Lease Documents. Revisions to the initial accepted Project Schedule must be accepted in writing by the Authorized Representative.
- 7.3. Lessee shall submit requests for revisions to the Project Schedule to the Authorized Representative, together with written rationale for revisions and description of logic for rescheduling work and maintaining the Ground Lease Milestone Dates listed in the Ground Lease Documents. Proposed revisions acceptable to the Authorized Representative will be incorporated into the next update of the Project Schedule.
- 7.4. Changes in activity description(s) may be done for clarification purpose only. If the proposed description change affects the Scope of Work covered by the activity, Lessee shall obtain approval of the Authorized Representative before incorporating into schedule.
- 7.5. Lessee shall be solely responsible for expediting the delivery of all materials and equipment to be furnished by him so that the progress of construction shall be maintained according to the currently approved Project Schedule for the Work. Lessee shall notify the Authorized Representative in writing, within ten (10) calendar days of the occurrence, whenever Lessee determines or anticipates that the delivery date of any material or equipment to be furnished by Lessee will be later than the delivery date indicated by the Project Schedule.

8. Float Time

- 8.1. Float or slack time, as calculated by Primavera using retained logic, associated with one chain of activities is defined as amount of time between earliest start date and latest start date or between earliest finish date and latest finish date for such activities, as calculated as part of the Project Schedule. Float or slack time shown on the Project Schedule is not for exclusive use or benefit of either the CITY or the Lessee and is available for use by either according to whichever first needs the use or benefit of the float to facilitate the effective use of available resources and to minimize the impact of Project problems, delays or Changes in the Work which may arise during performance. Lessee specifically agrees that float time may be used by the CITY in conjunction with their review activities or to resolve Project problems. Lessee agrees that there will be no basis for any modification of the Ground Lease Milestone Dates or an extension of the Ground Lease Time, or a claim for additional compensation as a result of any Project problem, Change Order or delay which only results in the loss of available positive float in the Project Schedule.
- 8.2. Float time shown on the Project Schedule shall not be used arbitrarily by Lessee in a manner which, in the opinion of the Authorized Representative, unnecessarily delays separate Lessees from proceeding with their work in a way which is detrimental to the interests of the CITY. If Lessee refuses to perform Work which is available and necessary to be performed in order not to delay any separate Lessees, the

CITY may, regardless of the float shown on the Project Schedule to be available for the path of activities which encompasses said Work, terminate the Lessee for default.

9. Adverse Weather Delays

- 9.1. Ground Lease time extensions for weather are based on the National Oceanic and Atmospheric Administration (NOAA) data for the project location. Time Extensions will only be considered for such delays which impact activities on the critical path of the Ground Lease as defined by the schedule currently accepted by the Authorized Representative at the time of the delay. However, such time extensions, if approved by the Authorized Representative, will be non-compensable. Weather delays may consist of days lost due to adverse weather conditions, days lost for dry-out of exposed soil, and/or days lost for site clean-up due to adverse weather.
- 9.2. The table below lists the number of work days typically lost to weather per month on critical path activities included in this Ground Lease. Working days lost due to weather in a given month in excess of those listed for that month will be considered for a non-compensatory time extension. Days are not cumulative from month to month. Such time extension must be requested by the Lessee.

Month	# of Days
January	8
February	7
March	7
April	4
May	4
June	4
July	4
August	4
September	4
October	4
November	8
December	8

EXHIBIT C

ATTACHMENT 2

QUALITY CONTROL PROGRAM

1.1 Program Plan.

Prior to commencing work at any work site, Lessee shall prepare and submit a Project specific Quality Control Plan. This plan shall cover the flow and distribution of correspondence, requests for information, procedural direction, specific technical instructions, controls instituted to assure the quality of the Work and the documenting of any other significant quality activities.

1.2 General.

The Lessee shall establish, provide, and maintain an effective Quality Control Program. Although guidelines are established and certain minimum requirements are specified herein and elsewhere in the Contract technical specifications, the Lessee shall assume full responsibility for accomplishing the stated purpose. The intent of this section is to enable the Lessee to establish a necessary level of control that will:

1.2.1 Adequately provide for the production of acceptable quality materials.

1.2.2 Provide sufficient information to assure both the Lessee and the Authorized Representative that the specification requirements can be met.

1.3 Quality Control program Presentation.

The Lessee shall be prepared to discuss and present, at the Pre-Construction Conference, his/her understanding of the quality control requirements. The quality control requirements contained in this section and elsewhere in the Contract technical specifications are in addition to and separate from the acceptance testing requirements.

1.4 Description of Program.

1.4.1 General Description.

The Lessee shall establish a Quality Control Program to perform inspection and testing of all items of work required by the technical specifications, including those performed by subcontractors. This Quality Control Program shall detail the methods and procedures that will be taken to ensure conformance to applicable specifications and Contract plans with respect to materials, workmanship, construction, finish, and functional performance. The Quality Control Program shall be effective for control of all construction work performed under this Contract and shall specifically include surveillance and tests required by the technical specifications, in addition to other requirements of this section and any

other activities deemed necessary by the Lessee to establish an effective level of quality control.

1.4.2 Quality Control Program.

The Lessee shall describe the Quality Control Program in a written document, which shall be reviewed and approved by the Authorized Representative prior to the start of any production, construction, or offsite fabrication. No partial payment will be made for materials subject to specific quality control requirements until the Quality Control Program has been reviewed. The written Quality Control Program shall be submitted to the Authorized Representative for review at least fifteen (15) calendar days before the mobilization.

The Quality Control Program shall be organized to address, at a minimum, the following items:

1.4.2.1 Quality control organization;

1.4.2.3 Submittals schedule;

1.4.2.4 Inspection requirements;

1.4.2.5 Quality control testing plan;

1.4.2.6 Documentation of quality control inspection activities; and

1.4.2.7 Requirements for corrective action when quality control and/or acceptance criteria are not met. The Lessee is encouraged to add any additional elements to the Quality Control Program that he/she deems necessary to adequately control all production and/or construction processes required by this Contract.

1.4.2.8 Inspection of all materials, construction, plant, and equipment for conformance to the technical specifications, and as required by Section 1.2.

1.4.2.9 Performance of all quality control tests as required by the technical specifications and Section 1.2. Certification at an equivalent level, by a state or nationally recognized organization will be acceptable.

1.4.3 Staffing Levels. The Lessee shall provide sufficient qualified quality control personnel to monitor each work activity at all times. Where material is being produced in a plant for incorporation into the work, separate plant and field technicians shall be provided at each plant and field placement location. The scheduling and coordinating of all inspection and testing must match the type and pace of work activity. The Quality Control Program shall state where different technicians will be required for different work elements.

1.5 Submittals Schedule

The Lessee shall submit a detailed listing of all submittals (for example, mix designs, material certifications) and shop drawings required by the technical specifications. The listing can be developed in a spreadsheet format and shall include:

1.5.1 Specification item number;

1.5.2 Item description;

1.5.3 Description of submittal;

1.5.4 Specification paragraph requiring submittal; and

1.5.5 Scheduled date of submittal.

1.6 Inspection Requirements

Quality control inspection functions shall be organized to provide inspections for all definable features of work, as detailed below. All inspections shall be documented by the Lessee as specified by Section 1.2. Inspections shall be performed as necessary to ensure continuing compliance with Contract requirements until completion of the particular feature of work. These shall include the following minimum requirements:

1.6.1 During plant operation for material production, quality control test results and periodic inspections shall be utilized to ensure the quality of aggregates and other mix components, and to adjust and control mix proportioning to meet the approved mix design and other requirements of the technical specifications. All equipment utilized in proportioning and mixing shall be inspected to ensure its proper operating condition.

1.6.2 During field operations, quality control test results and periodic inspections shall be utilized to ensure the quality of all materials and workmanship. All equipment utilized in placing, finishing, and compacting shall be inspected to ensure its proper operating condition and to ensure that all such operations are in conformance to the technical specifications and are within the plan dimensions, lines, grades, and tolerances specified.

1.7 Quality Control Testing Plan

As a part of the overall Quality Control Program, the Lessee shall implement a quality control testing plan, as required by the technical specifications. The testing plan shall include the minimum tests and test frequencies required by each technical specification Item, as well as any additional quality control tests that the Lessee deems necessary to adequately control production and/or construction processes. The testing plan can be developed in a spreadsheet fashion. All quality control test results shall be documented by the Lessee as required by Section 1.8.

1.8 Documentation

The Lessee shall maintain current quality control records of all inspections and tests performed. These records shall include factual evidence that the required inspections or tests have been performed, including type and number of inspections or tests involved; results of inspections or tests; nature of defects, deviations, causes for rejection, proposed remedial action; and corrective actions taken. These records must cover both conforming and defective or deficient features, and must include a statement that all supplies and materials incorporated in the work are in full compliance with the terms of the Contract. Legible copies of these records shall be furnished to the Authorized Representative. The records shall cover all work placed subsequent to the previously furnished records and shall be verified and signed by the Lessee's representative. Specific Lessee quality control records required for the Contract shall include, but are not necessarily limited to, the following records:

1.8.1 Inspection Reports. Each Lessee quality control technician shall maintain a log of all inspections performed for both Lessee and subcontractor operations on a form acceptable to the Authorized Representative. These technician's reports shall provide factual evidence that continuous quality control inspections have been performed and shall, as a minimum, include the following:

1.8.1.1 Technical specification item number and description;

1.8.1.2 Compliance with approved submittals;

1.8.1.3 Proper storage of materials and equipment;

1.8.1.4 Proper operation of all equipment;

1.8.1.5 Adherence to plans and technical specifications;

1.8.1.6 Review of quality control tests; and

1.8.1.7 Safety inspection.

The inspection reports shall be signed by the responsible quality control technician. The Authorized Representative shall be provided at least one copy of each inspection report on the workday following the day of record.

1.8.2 Test Reports. The Lessee shall be responsible for establishing a system, which will record all quality control test results. Test reports shall document the following information:

1.8.2.1 Technical specification item number and description;

1.8.2.2 Test designation;

1.8.2.3 Location;

1.8.2.4 Date of test;

1.8.2.5 Control requirements;

1.8.2.6 Test results;

1.8.2.7 Causes for rejection;

1.8.2.8 Recommended remedial actions; and

1.8.2.9 Retests.

Test results shall be submitted to the Authorized Representative prior to the start of the next day's work period. When required by the technical specifications, the Lessee shall maintain statistical quality control charts. The test reports shall be signed by the responsible quality control technician.

- 1.9 Corrective Action Requirements.** The Quality Control Program shall indicate the appropriate action to be taken when a process is deemed, or believed, to be out of control (out of tolerance) and detail what action will be taken to bring the process into control. The requirements for corrective action shall include both general requirements for operation of the Quality Control Program as a whole, and for individual items of work contained in the technical specifications. The Quality Control Program shall detail how the results of quality control inspections and tests will be used for determining the need for corrective action and shall contain clear sets of rules to gauge when a process is out of control and the type of correction to be taken to regain process control. When applicable or required by the technical specifications, the Lessee shall establish and utilize statistical quality control charts for individual quality control tests. The requirements for corrective action shall be linked to the control charts.

The Authorized Representative will notify the Lessee of any noncompliance with any of the foregoing requirements. The Lessee shall, after receipt of such notice, immediately take corrective action. Any notice, when delivered by the Authorized Representative or his designated representative to the Lessee or his/her authorized representative at the site of the work, shall be considered sufficient notice.

In cases where quality control activities do not comply with either the Lessee's Quality Control Program or the Contract provisions, or where the Lessee fails to properly operate and maintain an effective Quality Control Program, as determined by the Authorized Representative, the Authorized Representative may:

- 1.9.1** Order the Lessee to replace ineffective or unqualified quality control personnel or subcontractors.

1.9.2 Order the Lessee to stop operations until an appropriate corrective action is taken.

1.10 Surveillance by the Authorized Representative

All items of material and equipment shall be subject to surveillance by the CITY at the point of production, manufacture or shipment to determine if the Lessee, producer, manufacturer or shipper maintains an adequate quality control system in conformance with the requirements detailed herein and the applicable technical specifications and plans. In addition, all items of materials, equipment and work in place shall be subject to surveillance by the CITY at the site for the same purpose.

Surveillance by the Authorized Representative does not relieve the Lessee of performing quality control inspections of either "on-site" or "off-site" Lessee's or subcontractor's work.

1.11 Plan Update.

The Quality Control Plan shall reflect the interfaces between CITY or its designated representatives, Lessee, and other relevant organizational entities. It shall contain all appropriate interface control instructions. The plan shall be updated as necessary during this Contract to reflect any changes in the plan. The Quality Control Plan shall provide for the issuance of a "stop work" order by the Lessee or Authorized Representative at any time during the Work when significant adverse quality trends and/or deviations from the approved Quality Control Program are found.

ATTACHMENT 3

**LESSEE'S LIEN WAIVER AND RELEASE
UPON FINAL PAYMENT**

(To be provided by Lessee at Substantial Completion of each element of the ATL Energy Park)

STATE OF GEORGIA

COUNTY OF _____

The undersigned, _____ ("Subcontractor"), has been engaged under Agreement with the Lessee to furnish certain materials, equipment, services, and/or labor for the construction of improvements known as the _____, together with all improvements and appurtenances attendant thereto ("Project"), which Project is being constructed in the County of _____, State of Georgia on property that is owned by the City.

Upon receipt of the sum of \$ _____, Contractor Inc. waives and releases any and all claims, demands, actions, causes of action or other rights it may have against Lessee and City related to the Project through the date of _____, _____ ("Current Date") and reserving those rights that Contractor Inc. might have in any retained amounts on account of materials, equipment, services and/or labor furnished by the undersigned to or on account of the Lessee and City or any other entity for said Project. Exceptions as follows:

(if no exception or "none" is entered above, undersigned shall be deemed not to have reserved any claim.)

Contractor Inc. affirms, warrants, and represents that all laborers, materialmen, mechanics, manufacturers, suppliers, and subcontractors who have furnished services, labor, equipment, or materials, or any one of these items to Contractor Inc. have been paid in full for all work performed and all materials, equipment, labor or services supplied to Contractor Inc. for use at the Project through and including _____, _____ (date of Contractor Inc.'s last prior Application for Payment).

Subject to any exceptions (if any) listed above, Contractor Inc. further affirms, warrants, and represents that there are no outstanding claims of any nature, Agreement or otherwise, or for any personal injury, death or property damage, arising from or associated with the performance of Contractor Inc.'s work on the Project through and including the date hereof which might be the basis of any claim, suit, lien, or demand that could be asserted against the Lessee and City.

This Waiver is freely and voluntarily given and the undersigned acknowledges and represents that it has fully reviewed the terms and conditions of this Waiver, that it is fully

informed with respect to the legal effect of this Waiver, and that it has voluntarily chosen to accept the terms and conditions of this Waiver in return for the payment recited above. Subject to any exceptions (if any) listed above, Contractor Inc. agrees to indemnify, hold harmless and defend Lessee and City against any and all loss, claims, damages, costs or expense, of any nature whatsoever, including attorneys' fees, arising out of any claims or demands made by any of its employees, laborers, materialmen, subcontractors and consultants, of any tier, for materials, services, equipment and labor supplied to the Project through the Current Date.

The undersigned further agrees that making and receipt of payment and execution of this Waiver shall in no way release the undersigned from its continuing obligations with respect to the completion of any work remaining undone, including any obligations of the undersigned to City.

FOR CONTRACTOR INC.:

Applicable to Application for Payment No(s). _____

Signed: _____

By: _____

Title: _____

Date: _____

AFFIDAVIT

On this _____ day of _____, 20_____, before me appeared the above-signed, known or identified to me personally, who, being first duly sworn, did say that he/she is the authorized representative of Contractor Inc. and that this document was signed under oath personally and on behalf of Contractor Inc..

Notary Public

My Commission Expires: _____

Exhibit D

Insurance and Bonding Requirements

EXHIBIT D
INSURANCE & BONDING REQUIREMENTS
FC-7782 Green Acres ATL Energy Park
DESIGN

A. Preamble

The following requirements apply to all work under the Agreement. Compliance is required by Service Provider. **To the extent permitted by applicable law, the City of Atlanta (“City”) reserves the right to adjust or waive any insurance or bonding requirements contained in this Exhibit D and applicable to the Agreement.** For all purposes hereunder, including but not limited to any Additional Insured Endorsements, the City shall include the City of Atlanta, its elected officials, officers, agents, and employees.

1. Evidence of Insurance and Bonding Required Before Work Begins

No work under the Agreement may be commenced until all insurance and bonding requirements contained in this Exhibit D, or required by applicable law, have been complied with and evidence of such compliance satisfactory to City as to form and content has been filed with City.

At the time Service Provider submits to City its executed Agreement, Service Provider must satisfy all insurance and bonding requirements required by this Exhibit D and applicable by law, and provide the required written documentation to City evidencing such compliance. In the event that Service Provider does not comply with such submittal requirements within the time period established by the solicitation documents applicable to the Agreement, City may, in addition to any other rights City may have under the solicitation documents applicable to the Agreement or under applicable law, make a claim against any proposal security provided by Service Provider.

If the Service Provider is an entity (e.g., corporation, limited liability company, etc.) or a partnership (e.g., general partnership, limited partnership, joint venture, etc.) then Service Provider shall tender insurance certificates and bonds in the name of Service Provider’s entity or partnership as the primary insured.

2. Project Number & Name

The project number (FC-7782) and name (Green Acres ATL Energy Park) must be referenced in the description section of the insurance certificate.

3. Minimum Financial Security Requirements

All companies providing insurance required by this Exhibit D must meet certain minimum financial security requirements. These requirements must conform to the ratings published by A.M. Best & Co. in the current Best's Key Rating Guide - Property-

Casualty. Upon request, the Service Provider must submit the ratings for each company to the City.

For all agreements, regardless of size, companies providing insurance or bonds under the agreement must meet the following requirements:

- i) Best's Rating not less than A-;
- ii) Best's Financial Size Category not less than Class VII;
- iii) Companies must be authorized to conduct and transact insurance contracts by the Insurance Commissioner, State of Georgia; and
- iv) All performance and payment bonds must be underwritten by a U.S. Treasury Circular 570 listed company.

If the issuing company does not meet these minimum requirements, or for any other reason is or becomes unsatisfactory to City, City will notify Service Provider in writing. Service Provider must promptly obtain a new policy or bond issued by an insurer acceptable to City and submit to City evidence of its compliance with these conditions.

Service Provider's failure to comply with all insurance and bonding requirements set forth in this Exhibit D and applicable to the Agreement will not relieve Service Provider from any liability under the Agreement. Service Provider's obligations to comply with all insurance and bonding requirements set forth in Exhibit D and applicable to the Agreement will not be construed to conflict with or limit Service Provider's indemnification obligations under the Agreement.

4. Insurance and Bonds Required for Duration of Contract

All insurance and bonds required by this Exhibit D must be maintained during the entire term of the Agreement, including any renewal or extension terms, and until all work has been completed to the satisfaction of City.

5. Notices of Cancellation & Renewal

Service Provider must, notify the City of Atlanta in writing at the address listed below by mail, hand-delivery or facsimile transmission, within two (2) business days of any notices received from any insurance carriers providing insurance coverage or surety providing bonds under this Agreement and Exhibit D (including any attachments thereto) that Service Provider receives concerning the proposed cancellation, or termination of coverage or security:

Enterprise Risk Management
68 Mitchell St., Suite 9100
Atlanta, GA 30303
Facsimile No. (404) 658-7450

Confirmation of any mailed notices must be evidenced by return receipts of registered or certified mail.

Service Provider shall provide the City with evidence of required insurance and bonding prior to the commencement of this Agreement, and, thereafter, with a certificate and/or bonds evidencing renewals or changes thereto at least fifteen (15) days prior to the expiration of previously provided certificates and/or bonds.

6. Agent Acting as Authorized Representative

Each and every agent acting as Authorized Representative on behalf of a company affording coverage under this Agreement shall warrant when signing the Acord Certificate of Insurance that specific authorization has been granted by the Companies for the Agent to bind coverage as required and to execute the Acord Certificates of Insurance as evidence of such coverage.

In addition, each and every agent shall warrant when signing the Acord Certificate of Insurance that the Agent is licensed to do business in the State of Georgia and that the Company or Companies are currently in good standing in the State of Georgia.

7. Certificate Holder

The **City of Atlanta** must be named as certificate holder. All notices must be mailed to the attention of **Enterprise Risk Management at 68 Mitchell Street, Suite, 9100, Atlanta, Georgia 30303.**

8. Additional Insured Endorsements – Form CG 20 26 07 04 or Equivalent

City shall be covered as an Additional Insured, as its interest may appear, under any and all insurance required pursuant to this Agreement, and such insurance shall be primary and non-contributory with respect to the Additional Insured. However, this requirement does not apply to Workers' Compensation or Professional Liability Insurance. Additional insured status extending to ongoing and completed operations per CG 20 26 07 04 or their carrier equivalent shall be provided. Additional insured status shall be maintained following project completion equivalent to the statute of repose in the State of Georgia.

NOTE: A copy of the Additional Insured Endorsement or its equivalent must be forwarded to the Risk Management Department as soon as practicable but in no event more than ten (10) days after the effective date of the Agreement.

9. Mandatory Sub-Contractor/Consultant Compliance

Service Provider must require and ensure that all of Service Provider's subcontractors operating under the Agreement at any level are sufficiently insured and bonded.

10. Self-Insured Retentions, Deductibles or Similar Obligations

Any self-insured retention, deductible or similar obligation will be the sole responsibility of the Service Provider.

11. Waiver of Subrogation in favor of the City of Atlanta

The certificates of Commercial General Liability Insurance and Commercial Automobile Liability Insurance tendered by the Service Provider must clearly indicate a waiver of subrogation in favor of the City of Atlanta.

B. Workers' Compensation and Employer's Liability Insurance

Service Provider must procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits to cover each employee who is or may be engaged in work under the Agreement:

Workers' Compensation	Statutory
Employer's Liability:	
Bodily Injury by Accident/Disease	\$1,000,000 each accident
Bodily Injury by Accident/Disease	\$1,000,000 each employee
Bodily Injury by Accident/Disease	\$1,000,000 policy limit

C. Commercial General Liability Insurance

Service Provider must procure and maintain Commercial General Liability Insurance on Form CG 00 00 01 (or equivalent) in an amount not less than **\$1,000,000 per occurrence subject to a \$2,000,000 aggregate**. The following indicated extensions of coverage must be provided:

- ☒ Contractual Liability
- ☒ Broad Form Property Damage
- ☒ Premises Operations
- ☒ Personal Injury
- ☒ Advertising Injury
- ☒ Medical Expense
- ☒ Fire Legal Liability
- ☒ Independent Contractor/Consultants/SubContractor/Consultants
- ☒ Products – Completed Operations
- ☒ Additional Insured Endorsement (primary& non-contributing in favor of the City of Atlanta)
- ☒ Waiver of Subrogation in favor of the City of Atlanta

D. Commercial Automobile Liability Insurance

Service Provider must procure and maintain Automobile Liability Insurance in an amount not less than **\$1,000,000** Bodily Injury and Property Damage combined single limit. The following indicated extensions of coverage must be provided:

- ☒ Owned, Non-owned & Hired Vehicles
- ☒ Waiver of Subrogation in favor of the City of Atlanta

If Service Provider does not own any automobiles in the corporate name, non-owned vehicle coverage will apply and must be endorsed on either Service Provider's personal automobile policy or the Commercial General Liability coverage required under this **Exhibit D**.

Additionally, in accordance with Section 22-181(b) of Chapter 22, Code of Ordinances of the City of Atlanta, all vehicles requiring access to the restricted areas of the airport must be covered by an automobile liability policy in the minimum amount of **Ten Million Dollars (\$10,000,000)** combined single limit for personal injury and property damage. The \$10,000,000 limit of liability will also be imposed on any parties transporting workers, materials and/or equipment to the Airport site from parking lots or similar facilities.

E. Professional Liability /Errors & Omissions Insurance

Service Provider shall procure and maintain during the life of this contract Professional Liability/Errors & Omissions Insurance in an amount of **\$2,000,000** per occurrence and annual aggregate. The policy will fully address the Contractor/Consultant's professional services associated with the scope of work contained in this document. The policy will include at least a three year Extended Reporting Provision. As well as these extensions of coverage:

- ☒ Damages arising from a failure of computer security, or a wrongful release of private information
- ☒ Cost to notify consumers of a release of private information and to provide credit-monitoring or other remediation services in the event of a covered incident.

EXHIBIT D
INSURANCE & BONDING REQUIREMENTS
FC-7782 Green Acres ATL Energy Park
CONSTRUCTION

A. Preamble

The following requirements apply to all work under the Agreement. Compliance is required by Service Provider. **To the extent permitted by applicable law, the City of Atlanta (“City”) reserves the right to adjust or waive any insurance or bonding requirements contained in this Exhibit D and applicable to the Agreement.** For all purposes hereunder, including but not limited to any Additional Insured Endorsements, the City shall include the City of Atlanta, its elected officials, officers, agents, and employees.

1. Evidence of Insurance and Bonding Required Before Work Begins

No work under the Agreement may be commenced until all insurance and bonding requirements contained in this Exhibit D, or required by applicable law, have been complied with and evidence of such compliance satisfactory to City as to form and content has been filed with City.

At the time Service Provider submits to City its executed Agreement, Service Provider must satisfy all insurance and bonding requirements required by this Exhibit D and applicable by law, and provide the required written documentation to City evidencing such compliance. In the event that Service Provider does not comply with such submittal requirements within the time period established by the solicitation documents applicable to the Agreement, City may, in addition to any other rights City may have under the solicitation documents applicable to the Agreement or under applicable law, make a claim against any proposal security provided by Service Provider.

If the Service Provider is an entity (e.g., corporation, limited liability company, etc.) or a partnership (e.g., general partnership, limited partnership, joint venture, etc.) then Service Provider shall tender insurance certificates and bonds in the name of Service Provider’s entity or partnership as the primary insured.

2. Project Number & Name

The project number (FC-7782) and name (Green Acres ATL Energy Park) must be referenced in the description section of the insurance certificate.

3. Minimum Financial Security Requirements

All companies providing insurance required by this Exhibit D must meet certain minimum financial security requirements. These requirements must conform to the ratings published by A.M. Best & Co. in the current Best's Key Rating Guide - Property-

Casualty. Upon request, the Service Provider must submit the ratings for each company to the City.

For all agreements, regardless of size, companies providing insurance or bonds under the agreement must meet the following requirements:

- i) Best's Rating not less than A-;
- ii) Best's Financial Size Category not less than Class VII;
- v) Companies must be authorized to conduct and transact insurance contracts by the Insurance Commissioner, State of Georgia; and
- vi) All performance and payment bonds must be underwritten by a U.S. Treasury Circular 570 listed company.

If the issuing company does not meet these minimum requirements, or for any other reason is or becomes unsatisfactory to City, City will notify Service Provider in writing. Service Provider must promptly obtain a new policy or bond issued by an insurer acceptable to City and submit to City evidence of its compliance with these conditions.

Service Provider's failure to comply with all insurance and bonding requirements set forth in this Exhibit D and applicable to the Agreement will not relieve Service Provider from any liability under the Agreement. Service Provider's obligations to comply with all insurance and bonding requirements set forth in Exhibit D and applicable to the Agreement will not be construed to conflict with or limit Service Provider's indemnification obligations under the Agreement.

4. Insurance and Bonds Required for Duration of Contract

All insurance and bonds required by this Exhibit D must be maintained during the entire term of the Agreement, including any renewal or extension terms, and until all work has been completed to the satisfaction of City.

5. Notices of Cancellation & Renewal

Service Provider must, notify the City of Atlanta in writing at the address listed below by mail, hand-delivery or facsimile transmission, within two (2) business days of any notices received from any insurance carriers providing insurance coverage or surety providing bonds under this Agreement and Exhibit D (including any attachments thereto) that Service Provider receives concerning the proposed cancellation, or termination of coverage or security:

Enterprise Risk Management
68 Mitchell St., Suite 9100
Atlanta, GA 30303
Facsimile No. (404) 658-7450

Confirmation of any mailed notices must be evidenced by return receipts of registered or certified mail.

Service Provider shall provide the City with evidence of required insurance and bonding prior to the commencement of this Agreement, and, thereafter, with a certificate and/or bonds evidencing renewals or changes thereto at least fifteen (15) days prior to the expiration of previously provided certificates and/or bonds.

6. Agent Acting as Authorized Representative

Each and every agent acting as Authorized Representative on behalf of a company affording coverage under this Agreement shall warrant when signing the Acord Certificate of Insurance that specific authorization has been granted by the Companies for the Agent to bind coverage as required and to execute the Acord Certificates of Insurance as evidence of such coverage.

In addition, each and every agent shall warrant when signing the Acord Certificate of Insurance that the Agent is licensed to do business in the State of Georgia and that the Company or Companies are currently in good standing in the State of Georgia.

7. Certificate Holder

The **City of Atlanta** must be named as certificate holder. All notices must be mailed to the attention of **Enterprise Risk Management at 68 Mitchell Street, Suite, 9100, Atlanta, Georgia 30303.**

8. Additional Insured Endorsements – Form CG 20 26 07 04 or Equivalent

City shall be covered as an Additional Insured, as its interest may appear, under any and all insurance required pursuant to this Agreement, and such insurance shall be primary and non-contributory with respect to the Additional Insured. However, this requirement does not apply to Workers' Compensation or Professional Liability Insurance. Additional insured status extending to ongoing and completed operations per CG 20 26 07 04 or their carrier equivalent shall be provided. Additional insured status shall be maintained following project completion equivalent to the statute of repose in the State of Georgia.

NOTE: A copy of the Additional Insured Endorsement or its equivalent must be forwarded to the Risk Management Department as soon as practicable but in no event more than ten (10) days after the effective date of the Agreement.

9. Mandatory Sub-Contractor/Consultant Compliance

Service Provider must require and ensure that all of Service Provider's subcontractors operating under the Agreement at any level are sufficiently insured and bonded.

10. Self-Insured Retentions, Deductibles or Similar Obligations

Any self-insured retention, deductible or similar obligation will be the sole responsibility of the Service Provider.

11. Waiver of Subrogation in favor of the City of Atlanta

The certificates of Commercial General Liability Insurance and Commercial Automobile Liability Insurance tendered by the Service Provider must clearly indicate a waiver of subrogation in favor of the City of Atlanta.

B. Workers' Compensation and Employer's Liability Insurance

Service Provider must procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits to cover each employee who is or may be engaged in work under the Agreement:

Workers' Compensation	Statutory
Employer's Liability:	
Bodily Injury by Accident/Disease	\$1,000,000 each accident
Bodily Injury by Accident/Disease	\$1,000,000 each employee
Bodily Injury by Accident/Disease	\$1,000,000 policy limit

C. Commercial General Liability Insurance

Service Provider must procure and maintain Commercial General Liability Insurance on Form CG 00 00 01 (or equivalent) in an amount not less than **\$1,000,000 per occurrence subject to a \$2,000,000 aggregate**. The following indicated extensions of coverage must be provided:

- ☒ Contractual Liability
- ☒ Broad Form Property Damage
- ☒ Premises Operations
- ☒ Personal Injury
- ☒ Advertising Injury
- ☒ Medical Expense
- ☒ Fire Legal Liability
- ☒ Independent Contractor/Consultants/SubContractor/Consultants
- ☒ Products – Completed Operations
- ☒ Additional Insured Endorsement (primary& non-contributing in favor of the City of Atlanta)
- ☒ Waiver of Subrogation in favor of the City of Atlanta

D. Commercial Automobile Liability Insurance

Service Provider must procure and maintain Automobile Liability Insurance in an amount not less than **\$1,000,000** Bodily Injury and Property Damage combined single limit. The following indicated extensions of coverage must be provided:

- ☒ Owned, Non-owned & Hired Vehicles
- ☒ Waiver of Subrogation in favor of the City of Atlanta

If Service Provider does not own any automobiles in the corporate name, non-owned vehicle coverage will apply and must be endorsed on either Service Provider's personal automobile policy or the Commercial General Liability coverage required under this **Exhibit D**.

Additionally, in accordance with Section 22-181(b) of Chapter 22, Code of Ordinances of the City of Atlanta, all vehicles requiring access to the restricted areas of the airport must be covered by an automobile liability policy in the minimum amount of **Ten Million Dollars (\$10,000,000)** combined single limit for personal injury and property damage. The \$10,000,000 limit of liability will also be imposed on any parties transporting workers, materials and/or equipment to the Airport site from parking lots or similar facilities.

E. Pollution Liability

Service Provider shall procure and maintain Pollution Liability Insurance in an amount not less than **\$1,000,000** each occurrence/aggregate.

- ☒ Completed operations coverage shall remain in effect for no less than three (3) years after the end of the agreement.
- ☒ This coverage can also be satisfied with an endorsement to the General Liability policy.

F. Performance and Payment Bonds

At, or prior to, Service Provider's execution of the Agreement, Service Provider must, at its own expense, deliver to the City a Performance and a Payment Bond each in an amount equal to one hundred percent (100%) of the construction cost naming the City as co-obligee and issued by a surety company or companies in such form as approved by the City's Attorney as attached hereto at **Exhibit D-1**. The bonds must be renewed annually at one hundred percent (100%) of the cost as specified in the Agreement. The bonds must be kept in full force and effect during the Term and any renewals. In lieu of a Performance Bond, Service Provider may submit to the City an Irrevocable Letter of Credit in a form acceptable to City, in its sole discretion.

1. In addition, Service Provider must provide to City a fixed price contract or contracts for all work to be performed within the Premises, which contract(s) shall be insured by, and shall provide to the City, a Payment Bond in an amount equal to one hundred percent

(100%) of the work specified in such contract(s) and acceptable to the City's Chief Financial Officer and in such form as approved by the City Attorney. The Payment Bond shall name the City as the Obligee, shall meet the other requirements of the Agreement, and shall remain in full force and effect until: (i) all Improvements are completely and fully paid for, (ii) certificates of occupancy have been issued for the Premises, (iii) final lien waivers have been obtained from all contractors and subcontractors; (iv) the City has approved the final construction of the Improvements; and (v) the applicable limitations period under Georgia law for the commencement of a suit against the Payment Bond has lapsed.

2. The bonds must be issued as security for the faithful performance of this Agreement, including, maintenance and guarantee provisions, its covenants, stipulations and agreements of the Agreement, the payment of all bills and obligations arising out of the performance of its obligations under the Agreement, which bills and obligations might or would in any manner become a claim against the City, and guaranteeing all services and work set forth in the Agreement against faulty materials or poor workmanship, or both, in accordance with any warranty provisions of the Agreement.
3. The surety company issuing the bonds must give the Aviation General Manager notice in writing by registered mail at least sixty (60) days prior to an anniversary date of the bonds of its intention not to renew or to terminate the bonds.
4. A Corporate Surety that is satisfactory to City, authorized to do business in the State of Georgia, and listed in the latest issue of U.S. Treasury Circular 570 must execute the bonds.
5. An agent of the Surety residing in the State of Georgia must execute the bonds. The date of the Bonds must be the same as the date of execution of the Agreement by City. The Surety must appoint an agent for service in Atlanta, Georgia, upon whom all notices must be shown on each Bond. The person executing the Bonds on behalf of the Surety must file with the Bonds a general power of attorney unlimited as to amount and type of Bonds covered by such power of attorney, and certified to by an official of said Surety. The Bonds must be on forms provided by City. The Agreement will not be executed by City until after the approval of the Bonds by City's Attorney.
6. For additional information regarding Payment and Performance Bonds, please see **Exhibit D-1** attached hereto and incorporated herein by this reference.

EXHIBIT D
INSURANCE & BONDING REQUIREMENTS
FC-7782 Green Acres ATL Energy Park
OPERATION & MAINTENANCE

A. Preamble

The following requirements apply to all work under the Lease. Compliance is required by Service Provider. **To the extent permitted by applicable law, the City of Atlanta (“City”) reserves the right to adjust or waive any insurance or bonding requirements contained in this Exhibit D and applicable to the Lease.** For all purposes hereunder, including but not limited to any Additional Insured Endorsements, the City shall include the City of Atlanta, its elected officials, officers, agents, and employees.

1. Evidence of Insurance and Bonding Required Before Work Begins

No work under the Lease may be commenced until all insurance and bonding requirements contained in this Exhibit D, or required by applicable law, have been complied with and evidence of such compliance satisfactory to City as to form and content has been filed with City.

At the time Service Provider submits to City its executed Lease, Service Provider must satisfy all insurance and bonding requirements required by this Exhibit D and applicable by law, and provide the required written documentation to City evidencing such compliance. In the event that Service Provider does not comply with such submittal requirements within the time period established by the solicitation documents applicable to the Lease, City may, in addition to any other rights City may have under the solicitation documents applicable to the Lease or under applicable law, make a claim against any proposal security provided by Service Provider.

If the Service Provider is an entity (e.g., corporation, limited liability company, etc.) or a partnership (e.g., general partnership, limited partnership, joint venture, etc.) then Service Provider shall tender insurance certificates and bonds in the name of Service Provider’s entity or partnership as the primary insured.

2. Project Number & Name

The project number (FC-7782) and name (Green Acres ATL Energy Park) must be referenced in the description section of the insurance certificate.

3. Minimum Financial Security Requirements

All companies providing insurance required by this Exhibit D must meet certain minimum financial security requirements. These requirements must conform to the ratings published by A.M. Best & Co. in the current Best's Key Rating Guide - Property-

Casualty. Upon request, the Service Provider must submit the ratings for each company to the City.

For all Leases, regardless of size, companies providing insurance or bonds under the Lease must meet the following requirements:

- i) Best's Rating not less than A-;
- ii) Best's Financial Size Category not less than Class VII;
- vii) Companies must be authorized to conduct and transact insurance contracts by the Insurance Commissioner, State of Georgia; and
- viii) All performance and payment bonds must be underwritten by a U.S. Treasury Circular 570 listed company.

If the issuing company does not meet these minimum requirements, or for any other reason is or becomes unsatisfactory to City, City will notify Service Provider in writing. Service Provider must promptly obtain a new policy or bond issued by an insurer acceptable to City and submit to City evidence of its compliance with these conditions.

Service Provider's failure to comply with all insurance and bonding requirements set forth in this Exhibit D and applicable to the Lease will not relieve Service Provider from any liability under the Lease. Service Provider's obligations to comply with all insurance and bonding requirements set forth in Exhibit D and applicable to the Lease will not be construed to conflict with or limit Service Provider's indemnification obligations under the Lease.

4. Insurance and Bonds Required for Duration of Contract

All insurance and bonds required by this Exhibit D must be maintained during the entire term of the Lease, including any renewal or extension terms, and until all work has been completed to the satisfaction of City.

5. Notices of Cancellation & Renewal

Service Provider must, notify the City of Atlanta in writing at the address listed below by mail, hand-delivery or facsimile transmission, within two (2) business days of any notices received from any insurance carriers providing insurance coverage or surety providing bonds under this Lease and Exhibit D (including any attachments thereto) that Service Provider receives concerning the proposed cancellation, or termination of coverage or security:

Enterprise Risk Management
68 Mitchell St., Suite 9100
Atlanta, GA 30303
Facsimile No. (404) 658-7450

Confirmation of any mailed notices must be evidenced by return receipts of registered or certified mail.

Service Provider shall provide the City with evidence of required insurance and bonding prior to the commencement of this Lease, and, thereafter, with a certificate and/or bonds evidencing renewals or changes thereto at least fifteen (15) days prior to the expiration of previously provided certificates and/or bonds.

6. Agent Acting as Authorized Representative

Each and every agent acting as Authorized Representative on behalf of a company affording coverage under this Lease shall warrant when signing the Acord Certificate of Insurance that specific authorization has been granted by the Companies for the Agent to bind coverage as required and to execute the Acord Certificates of Insurance as evidence of such coverage.

In addition, each and every agent shall warrant when signing the Acord Certificate of Insurance that the Agent is licensed to do business in the State of Georgia and that the Company or Companies are currently in good standing in the State of Georgia.

7. Certificate Holder

The **City of Atlanta** must be named as certificate holder. All notices must be mailed to the attention of **Enterprise Risk Management at 68 Mitchell Street, Suite, 9100, Atlanta, Georgia 30303.**

8. Additional Insured Endorsements – Form CG 20 26 07 04 or Equivalent

City shall be covered as an Additional Insured, as its interest may appear, under any and all insurance required pursuant to this Lease, and such insurance shall be primary and non-contributory with respect to the Additional Insured. However, this requirement does not apply to Workers' Compensation or Professional Liability Insurance. Additional insured status extending to ongoing and completed operations per CG 20 26 07 04 or their carrier equivalent shall be provided. Additional insured status shall be maintained following project completion equivalent to the statute of repose in the State of Georgia.

NOTE: A copy of the Additional Insured Endorsement or its equivalent must be forwarded to the Risk Management Department as soon as practicable but in no event more than ten (10) days after the effective date of the Lease.

9. Mandatory Sub-Contractor/Consultant Compliance

Service Provider must require and ensure that all of Service Provider's subcontractors operating under the Lease at any level are sufficiently insured and bonded.

10. Self-Insured Retentions, Deductibles or Similar Obligations

Any self-insured retention, deductible or similar obligation will be the sole responsibility of the Service Provider.

11. Waiver of Subrogation in favor of the City of Atlanta

The certificates of Commercial General Liability Insurance and Commercial Automobile Liability Insurance tendered by the Service Provider must clearly indicate a waiver of subrogation in favor of the City of Atlanta.

B. Workers' Compensation and Employer's Liability Insurance

Service Provider must procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits to cover each employee who is or may be engaged in work under the Lease:

Workers' Compensation	Statutory
Employer's Liability:	
Bodily Injury by Accident/Disease	\$1,000,000 each accident
Bodily Injury by Accident/Disease	\$1,000,000 each employee
Bodily Injury by Accident/Disease	\$1,000,000 policy limit

C. Commercial General Liability Insurance

Service Provider must procure and maintain Commercial General Liability Insurance on Form CG 00 00 01 (or equivalent) in an amount not less than **\$1,000,000 per occurrence subject to a \$2,000,000 aggregate**. The following indicated extensions of coverage must be provided:

- ☒ Contractual Liability
- ☒ Broad Form Property Damage
- ☒ Premises Operations
- ☒ Personal Injury
- ☒ Advertising Injury
- ☒ Medical Expense
- ☒ Fire Legal Liability
- ☒ Independent Contractor/Consultants/SubContractor/Consultants
- ☒ Products – Completed Operations
- ☒ Additional Insured Endorsement (primary& non-contributing in favor of the City of Atlanta)
- ☒ Waiver of Subrogation in favor of the City of Atlanta

D. Commercial Automobile Liability Insurance

Service Provider must procure and maintain Automobile Liability Insurance in an amount not less than **\$1,000,000** Bodily Injury and Property Damage combined single limit. The following indicated extensions of coverage must be provided:

- ☒ Owned, Non-owned & Hired Vehicles
- ☒ Waiver of Subrogation in favor of the City of Atlanta

If Service Provider does not own any automobiles in the corporate name, non-owned vehicle coverage will apply and must be endorsed on either Service Provider's personal automobile policy or the Commercial General Liability coverage required under this **Exhibit D**.

Additionally, in accordance with Section 22-181(b) of Chapter 22, Code of Ordinances of the City of Atlanta, all vehicles requiring access to the restricted areas of the airport must be covered by an automobile liability policy in the minimum amount of **Ten Million Dollars (\$10,000,000)** combined single limit for personal injury and property damage. The \$10,000,000 limit of liability will also be imposed on any parties transporting workers, materials and/or equipment to the Airport site from parking lots or similar facilities.

E. Crime Policy

The Service Provider shall procure and maintain a Crime policy covering all persons receiving or disbursing funds under this contract. The coverage shall be in an amount not less than **\$1,000,000** and shall be specifically endorsed to cover loss under this contract and shall name the City of Atlanta as Loss Payee.

F. Pollution Liability

Service Provider shall procure and maintain Pollution Liability Insurance in an amount not less than **\$1,000,000** each occurrence/aggregate.

- ☒ Completed operations coverage shall remain in effect for no less than three (3) years after the end of the lease.
- ☒ This coverage can also be satisfied with an endorsement to the General Liability policy.

H. Property Coverage

Service Provider shall procure and maintain all risk property coverage in an amount equal to replacement value for all equipment, furniture, fixtures, machinery and/ or personal property.

I. Performance and Payment Bonds

At, or prior to, Service Provider's execution of the Lease, Service Provider must, at its own expense, deliver to the City a Performance and a Payment Bond each in an amount of five

million (\$5,000,000) naming the City as co-obligee and issued by a surety company or companies in such form as approved by the City's Attorney as attached hereto at **Exhibit D-1**. The bonds must be renewed annually at one hundred percent (100%). The bonds must be kept in full force and effect during the Term and any renewals. In lieu of a Performance Bond, Service Provider may submit to the City an Irrevocable Letter of Credit in a form acceptable to City, in its sole discretion.

2. In addition, Service Provider must provide to City a fixed price contract or contracts for all work to be performed within the Premises, which contract(s) shall be insured by, and shall provide to the City, a Payment Bond in an amount equal to one hundred percent (100%) of the work specified in such contract(s) and acceptable to the City's Chief Financial Officer and in such form as approved by the City Attorney. The Payment Bond shall name the City as the Obligee, shall meet the other requirements of the Lease, and shall remain in full force and effect until: (i) all Improvements are completely and fully paid for, (ii) certificates of occupancy have been issued for the Premises, (iii) final lien waivers have been obtained from all contractors and subcontractors; (iv) the City has approved the final construction of the Improvements; and (v) the applicable limitations period under Georgia law for the commencement of a suit against the Payment Bond has lapsed.
2. The bonds must be issued as security for the faithful performance of this Lease, including, maintenance and guarantee provisions, its covenants, stipulations and Leases of the Lease, the payment of all bills and obligations arising out of the performance of its obligations under the Lease, which bills and obligations might or would in any manner become a claim against the City, and guaranteeing all services and work set forth in the Lease against faulty materials or poor workmanship, or both, in accordance with any warranty provisions of the Lease.
3. The surety company issuing the bonds must give the Aviation General Manager notice in writing by registered mail at least sixty (60) days prior to an anniversary date of the bonds of its intention not to renew or to terminate the bonds.
4. A Corporate Surety that is satisfactory to City, authorized to do business in the State of Georgia, and listed in the latest issue of U.S. Treasury Circular 570 must execute the bonds.
5. An agent of the Surety residing in the State of Georgia must execute the bonds. The date of the Bonds must be the same as the date of execution of the Lease by City. The Surety must appoint an agent for service in Atlanta, Georgia, upon whom all notices must be shown on each Bond. The person executing the Bonds on behalf of the Surety must file with the Bonds a general power of attorney unlimited as to amount and type of Bonds covered by such power of attorney, and certified to by an official of said Surety. The Bonds must be on forms provided by City. The Lease will not be executed by City until after the approval of the Bonds by City's Attorney.

6. For additional information regarding Payment and Performance Bonds, please see **Exhibit D-1** attached hereto and incorporated herein by this reference.

EXHIBIT D-1
PERFORMANCE AND PAYMENT BONDS

1. At, or prior to, Service Provider's execution of the Agreement, Service Provider must, at its own expense, deliver to the City a Performance and a Payment Bond each in an amount equal to one hundred percent (100%) of the first year's cost of the design, construction, operation and maintenance services as specified in the Agreement, naming the City as co-obligee and issued by a surety company or companies in such form as approved by the City's Attorney as attached hereto at **Exhibit D-1**. The bonds must be renewed annually at one hundred percent (100%) of the then current year's design, construction, operation and maintenance services cost as specified in the Agreement. The bonds must be kept in full force and effect during the Term and any renewals. In lieu of a Performance Bond, Service Provider may submit to the City an Irrevocable Letter of Credit in a form acceptable to City, in its sole discretion.
2. The bonds must be issued as security for the faithful performance of this Agreement, including, maintenance and guarantee provisions, its covenants, stipulations and agreements of the Agreement, the payment of all bills and obligations arising out of the performance its obligations under the Agreement, which bills and obligations might or would in any manner become a claim against the City, and guaranteeing all services and work set forth in the Agreement against faulty materials or poor workmanship, or both, in accordance with any warranty provisions of the Agreement.
3. The surety company issuing the bonds must give the City notice in writing by registered mail at least sixty (60) days prior to an anniversary date of the bonds of its intention not to renew or to terminate the bonds.
4. A Corporate Surety that is satisfactory to City, authorized to do business in the State of Georgia, and listed in the latest issue of U.S. Treasury Circular 570 must execute the bonds.
5. An agent of the Surety residing in the State of Georgia must execute the bonds. The date of the Bonds must be the same as the date of execution of the Agreement by City. The Surety must appoint an agent for service in Atlanta, Georgia upon whom all notices must be shown on each Bond. The person executing the Bonds on behalf of the Surety must file with the Bonds a general power of attorney unlimited as to amount and type of Bonds covered by such power of attorney, and certified to by an official of said Surety. The Bonds must be on forms provided by City. The Agreement will not be executed by City until after the approval of the Bonds by City's Attorney.

EXHIBIT D-1

ATTACHMENT 1

Performance Bond

INSTRUCTIONS

1. This form is required for use in connection with the Agreement identified on its face. There shall be no deviation from this form without approval by the City.
2. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of the form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an office of the corporation involved, evidence of this authority must be furnished.
3. Corporation executing the bond as surety must be among those appearing on the U.S. Treasury Department's most current list of approved sureties and must be acting within the amounts and limitations set forth therein.
4. Corporate surety shall be duly authorized by the Commissioner of Insurance of the State of Georgia to transact surety business in the State of Georgia.
5. Do not date this bond. The City will date this bond the same date or later than the date of the Agreement.
6. The Surety shall attach a duly authorized power-of-attorney authorizing signature on its behalf of any attorney-in-fact.
7. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Seal."
8. The name of each person signing this bond shall be typed or printed in the space provided.

Performance Bond

"City" City of Atlanta, Georgia
"Project" Green Acres ATL Energy Park
"FC No." 7782

"Principal"

Type of Organization ("X" one):
_____ Individual
_____ Partnership
_____ Joint Venture
_____ Corporation

"Surety:" (Name and Business Address)

duly authorized by the Commissioner of Insurance of
the State of Georgia to transact surety business in the
State of Georgia.

"Agreement:" Agreement between Principal and City, dated _____ day of _____, 20____, regarding
performance of Work relative to the Project.

"Penal Sum:" _____

KNOW ALL MEN BY THESE PRESENTS, that we, the Principal and Surety hereto, as named above, are held and firmly bound to the City in the above Penal Sum for the payment of which well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, jointly and severally. Principal and Surety agree that the Penal Sum shall be equal to or greater than one hundred percent (100%) of the total Management Fee as specified in the Agreement for the first year of the Term as defined therein. If this bond is renewed annually as described below, then Principal and Surety agree that the Penal Sum shall equal or exceed the Management Fee as specified in the Agreement for the same 12-month period of the annual bond.

WHEREAS, the Principal and the City entered into the Agreement identified above;

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully and fully comply with, perform and fulfill all of the undertakings, covenants, conditions and all other of the terms and conditions of said Agreement, including any and all duly authorized modifications of such Agreement, within the original term of such Agreement and any extensions thereof, which shall include, but not be limited to any obligations created by way of warranties and/or guarantees for workmanship and materials which warranty and/or guarantee may extend for a period of time beyond completion of said Agreement, this obligation shall be void; otherwise, of full force and effect.

And the Surety to this bond, for value received, agrees that no modification, change, extension of time, alteration or addition to the terms of the Agreement or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such modification, change, extension of time, alteration or addition to the terms of the Agreement or the Work. Surety further agrees that it will provide City with at least 60 days' written notice by registered mail prior to any suspension, cancellation or termination of this bond; otherwise, this bond shall remain in full force and effect for a minimum of one (1) year (i.e., twelve (12) full months) beginning from the Effective Date of the Agreement. This bond may be renewed on an annual basis provided the renewal covers the requisite Penal Sum as required above; and, in the event Surety declines to renew this bond, Surety agrees that it will provide City with at least 60 days' written notice by registered mail prior to the expiration date of bond.

It is agreed that this bond is executed pursuant to and in accordance with the provision of O.C.G.A. Sections 13-10-1 and 36-82-101, *et seq.* and is intended to be and shall be construed to be a bond in compliance with the requirements thereof, though not restricted thereto.

IN WITNESS WHEREOF, the Principal and the Surety have caused these presents to be duly signed and sealed this _____ day of _____, 20____.

PRINCIPAL: _____

President/Vice President (Sign)

President/Vice President (Type or Print)

Attested to by:

Secretary/Assistant Secretary (Seal)

SURETY: _____

By: _____
Attorney-in-Fact (Sign)

Attorney-in-Fact (Type or Print)

APPROVED AS TO FORM

Associate/Assistant City Attorney

APPROVED

City's Chief Financial Officer

EXHIBIT D-1

ATTACHMENT 2

Payment Bond

INSTRUCTIONS

1. This form is required for use in connection with the Agreement identified on its face. There shall be no deviation from this form without approval by the City.
2. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of the form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an office of the corporation involved, evidence of this authority must be furnished.
3. Corporation executing the bond as surety must be among those appearing on the U.S. Treasury Department's most current list of approved sureties and must be acting within the amounts and limitations set forth therein.
4. Corporate surety shall be duly authorized by the Commissioner of Insurance of the State of Georgia to transact surety business in the State of Georgia.
5. Do not date this bond. The City will date this bond the same date or later than the date of the Agreement.
6. The Surety shall attach a duly authorized power-of-attorney authorizing signature on its behalf of any attorney-in-fact.
7. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Seal."
8. The name of each person signing this bond shall be typed or printed in the space provided.

Payment Bond

"City" City of Atlanta, Georgia
"Project" Green Acres ATL Energy Park
"FC No." 7782

"Principal"

Type of Organization ("X" one):
☐ Individual
☐ Partnership
☐ Joint Venture
☐ Corporation

"Surety:" (Name and Business Address)

duly authorized by the Commissioner of Insurance of
the State of Georgia to transact surety business in the
State of Georgia.

"Agreement:" Agreement between Principal and City, dated _____ day of _____, 20____, regarding
performance of Work relative to the Project.

"Penal Sum:" _____

KNOW ALL MEN BY THESE PRESENTS, that we, the Principal and Surety hereto, as named above, are held and firmly bound to the City in the above Penal Sum for the payment of which well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, jointly and severally. Principal and Surety agree that the Penal Sum shall be equal to or greater than one hundred percent (100%) of the total Management Fee as specified in the Agreement for the first year of the Term as defined therein. If this bond is renewed annually as described below, then Principal and Surety agree that the Penal Sum shall equal or exceed the Management Fee as specified in the Agreement for the same 12-month period of the annual bond.

WHEREAS, the Principal and the City entered into the Agreement identified above;

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully and fully comply with, perform and fulfill all of the undertakings, covenants, conditions and all other of the terms and conditions of said Agreement, including any and all duly authorized modifications of such Agreement, within the original term of such Agreement and any extensions thereof, which shall include, but not be limited to any obligations created by way of warranties and/or guarantees for workmanship and materials which warranty and/or guarantee may extend for a period of time beyond completion of said Agreement, this obligation shall be void; otherwise, of full force and effect.

And the Surety to this bond, for value received, agrees that no modification, change, extension of time, alteration or addition to the terms of the Agreement or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such modification, change, extension of time, alteration or addition to the terms of the Agreement or the Work. Surety further agrees that it will provide City with at least 60 days' written notice by registered mail prior to any suspension, cancellation or termination of this bond; otherwise, this bond shall remain in full force and effect for a minimum of one (1) year (i.e., twelve (12) full months) beginning from the Effective Date of the Agreement. This bond may be renewed on an annual basis provided the renewal covers the requisite Penal Sum as required above; and, in the event Surety declines to renew this bond, Surety agrees that it will provide City with at least 60 days' written notice by registered mail prior to the expiration date of bond.

It is agreed that this bond is executed pursuant to and in accordance with the provision of O.C.G.A. Sections 13-10-1 and 36-82-101, *et seq.* and is intended to be and shall be construed to be a bond in compliance with the requirements thereof, though not restricted thereto.

IN WITNESS WHEREOF, the Principal and the Surety have caused these presents to be duly signed and sealed this _____ day of _____, 20____.

PRINCIPAL: _____

President/Vice President (Sign)

President/Vice President (Type or Print)

Attested to by:

Secretary/Assistant Secretary (Seal)

SURETY: _____

By: _____
Attorney-in-Fact (Sign)

Attorney-in-Fact (Type or Print)

APPROVED AS TO FORM

Associate/Assistant City Attorney

APPROVED

City's Chief Financial Officer

EXHIBIT E

BACKGROUND AND PROGRAM REQUIREMENTS

EXHIBIT E
BACKGROUND AND PROGRAM REQUIREMENTS
GREEN ACRES ATL ENERGY PARK

1. Summary

Respondent is solely responsible for verification/validation of initial feedstock estimates available to the sustainability Project.

Respondents must size the facility to be capable of accepting all ATL and COA Department of Public Works (DPW) Municipal Solid Waste (MSW) as describe herein, and any other streams acquired by the Respondent, in its total during the term of the Lease Agreement.

2. Background

1.1 Waste Characterization:

ATL serves over 95 million passengers (2013 Total Enplanement and Deplanement) per year, and as a result, generates a significant quantity of solid waste. In October 2013, a Waste Characterization Study (WCS) was completed to gain further understanding of the types and quantities of waste generated at ATL. This Exhibit provides a summary of the 2013 WCS.

The majority of the Municipal Solid Waste (MSW) generated at ATL comes from the airport's terminals and seven concourses commonly known as the Central Passenger Terminal Complex (CPTC).

In 2012, approximately 5 percent of the waste stream generated from the CPTC was recycled. The WCS indicated that approximately 80 percent of the current total waste stream consists of recyclable/compostable materials.

Table 1 depicts the total annual percentages of Material Type

Material Type	Percentage
Paper	32.1%
Glass	2.5%
Metal	2.5%
Plastic	21.1%
Organic*	32.0%*
Construction & Demolition	0.3%
Household Hazardous Waste	0.1%
Special Waste	0.1%
Other Waste	9.4%

ATL generates a significant amount of MSW per year, of which approximately 61% (29% food waste ¹and 32% paper) is compostable. This proposed sustainability initiative must also

¹ Total organics stream is 32% however 29% includes back-of-the-house and front-of-the-house food waste. The balance is made up of Textiles, Wood Pallets, and Carpet/Padding)

be capable of reprocessing/repurposing/recycling in excess of an estimated nineteen (19) thousand tons of chipped yard trimmings from the COA's Department of Public Works (DPW).

Figure 1 Total Annual Percentages by Material Type

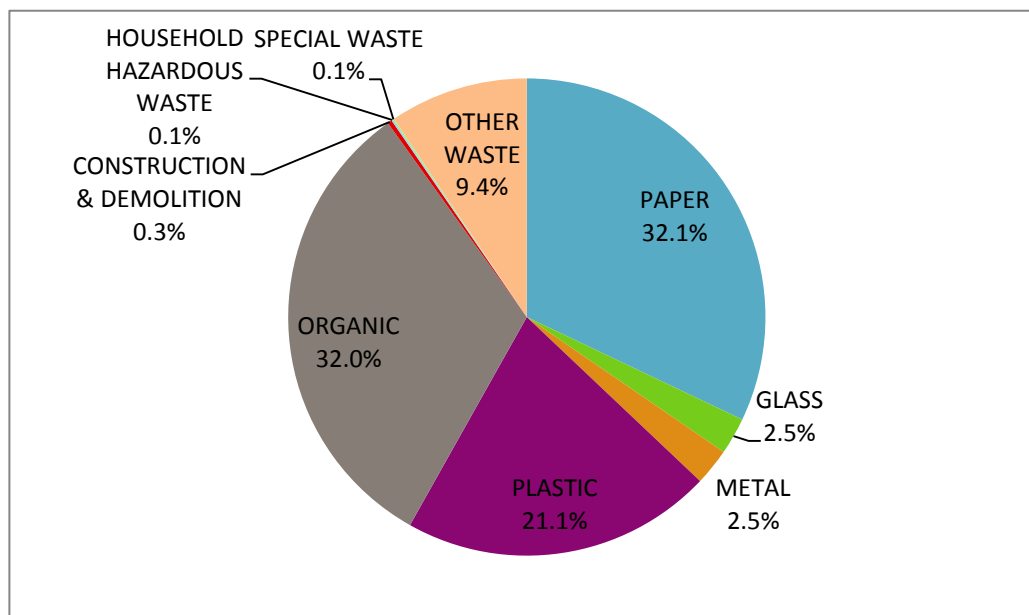


Table 2 lists the total annual percentages by Functional Type (i.e. the purpose that the material is used for).

Table 2 Total Annual Percentages by Functional Type

Functional Type	Percentage
Containers and Packaging	59.5% ²
Durable Goods	0.8%
Non-Durable Goods	38.6% ³
Other Wastes	1.1%

Table 3 contains an itemization of the recyclable and/or compostable materials (approximately 80%) that are currently disposed of annually from CPTC waste streams as determined by the 2013 WCS. It is assumed that the preference is to recycle the waste stream when possible instead of composting. Therefore, approximately 43% of the total waste stream (100% total waste stream) consists of recyclable material and approximately 36% of the total waste stream is compostable material. However, if composting is the

² Containers and packaging are defined as Cardboard/ Kraft Paper, Compostable packaging and service ware, Non-compostable paper, Glass, Aluminum, PETE, HDPE, PP, PS, select #7 plastics, plastic trash bags, plastic merchandise bags, Used oil containers, and 8.6% liquids

³ Non-durable goods include Newspaper, Mixed Paper/ Other Office Paper, Magazines, Directories, Plastic Composite/Combination, Food Waste, Clothing/Textile, Rubber/Leather.

preference, the waste stream that is labeled in the table below including both recyclable and compostable material can be divided equally for recycling and composting.

Table 3 Materials that are Recyclable/Compostable

Material	Percentage of Total Waste Stream	Recyclable	Compostable
Food Waste	28.9		X
Other Paper – Compostable ¹	14.8	X	X
Cardboard/Kraft Paper ²	6.4	X	X
Plastic #1 PETE	6.0	X	
Other Paper – Non-compostable	3.9	X	
Plastic Trash Bags	3.8	X	
Mixed paper/office paper ²	3.1	X	X
Glass	2.5	X	
Magazines/Directories	2.3	X	
Aluminum	2.3	X	
Clothing/Textiles	1.7	X	
Newspaper ²	1.6	X	X
Plastic #2 HDPE	0.8	X	
Carpet/Padding	0.5	X	
Plastic Grocery/Merchandise Bags	0.4	X	
Ferrous/Steel	0.1	X	
Wood Pallets	0.1	X	

Footnotes – 1. Assume 50% recyclable material and 50% compostable material for total percentage calculations;

2 Assume 100% recyclable for total percentage calculations.

Assume 175 thousand gallons of cooking oil on an annual basis as well as 50 thousand gallons of grease trap fluids annually.

2. Program of Requirements:

2.1 Professional Standards:

- 2.1.1 The permit drawings and specifications must be stamped by an Engineer licensed in the State of Georgia;
- 2.1.2 The General Contractor must be licensed by the State of Georgia;
- 2.1.3 All work associated with the ATL Energy Park must comply with local, state, and Federal codes, ordinances, permitting processes, regulations, and laws;
- 2.1.4 Based on the guidance provided in Federal Aviation Administration (FAA) Advisory Circular No. 150/5200-33B, all waste-handling facilities at the proposed site will be enclosed to ensure safety and minimize risk. To avoid attracting rodents and birds, all

processes, including unloading of waste and loading of end products, will occur in an enclosed area.

2.2 Facility General Standards:

- 2.2.1 Provide treatment facilities and equipment that shall reliably repurpose/reprocess/recycle a minimum of ninety (90%) percent of the MSW delivered to the At Energy Park by ATL and COA Department of Public Works which would normally be sent to a landfill facility by year 2020. The facility shall be in full compliance with Federal and State regulations and contractual standards for treatment and disposal of MSW;
- 2.2.2 Minimize life-cycle cost;
- 2.2.3 Design and construct the Energy Park Facilities that will have no detectable odors at the property lines of the Energy Park Site;
- 2.2.4 Design, construct, and operate the facility as not to attract rodents, wildlife, and/or birds;
- 2.2.5 Design and Construct treatment facilities with a high degree of aesthetics to easily blend into the planned mixed use development of the surrounding properties;
- 2.2.6 Incineration of waste is not allowed. The successful respondent will be responsible for disposing and tracking the end products from the facility. The facility will include a fully enclosed processing area for incoming waste streams. Measures will be taken to ensure no odorous air escapes the facility. The airspace inside the facility will be fully odor controlled.

2.3 Facility Specific Standards:

- 2.4 On the date of beneficial occupancy the facility must consist of at least the following components:
 - 2.4.1 Loading Area;
 - 2.4.2 Tipping Floor;
 - 2.4.3 Mixing Area (separation of recyclables);
 - 2.4.4 Anerobic Digestion;
 - 2.4.5 Enclosed Composting & Curing Piles;
 - 2.4.6 Thermal Gasification;
 - 2.4.7 Biogas;
 - 2.4.8 Ash Meltling Technology; and
 - 2.4.9 Odor Control Biofiltration Towers.

See the conceptual process flow as depicted in the graphics below.

2.5 Facility Site:

- 2.4.3 DOA has identified a 39-acre site located south of the 5th Runway, off Forest Parkway on a property owned by the COA in Clayton County. At the end of the lease term, ownership of the sustainability Project will transfer to City or be

removed, at no cost to City, bringing the site to pre-development conditions at the total discretion of City;

2.6 Site Requirements

2.6.1 All construction/renovations/upgrades/improvements shall be accomplished in accordance with Exhibit C of this Ground Lease Agreement, and/or the DOA Design Guidelines, and/or the Tenant Project Submittal Guidelines.

2.6.2 Access

2.6.2.1 During Construction – Construction access will be limited to minimize impacts to the traveling public and require a site access program to be submitted to and approved by the Department of Aviation (DOA) prior to the start of construction.

2.6.2.2 Final Configuration Requirements – All exterior design shall be reviewed and accepted by the DOA.

2.6.2.3 Responsibility for Off-site Improvements – All off-site improvements required for these facilities shall be the responsibility of the successful Respondent.

2.6.3 Restrictions

2.6.3.1 Existing Utility Easements and Facilities – The successful respondent shall coordinate and gain DOA approval of all utility easements required for the facilities. The successful Respondent shall support and provide engineering support to the DOA as necessary to support execution of any and all required easements, encroachments, or access documents.

2.6.4 Utilities

2.6.4.1 Storm water Requirements & Outfall – The successful Respondent will be responsible for design and construction of infrastructure to support the facilities. The successful Respondent, through the design and review process, must demonstrate that existing capabilities are not compromised or must make necessary improvements to support the development facilities at the Lessee's sole expense.

2.6.4.2 Sanitary Sewer Service - The successful Respondent will be responsible for design and construction of infrastructure to support the facilities. The successful Respondent, through the design and review process, must demonstrate that existing capabilities are not compromised or must make necessary improvements to support the development facilities at the Lessee's sole expense.

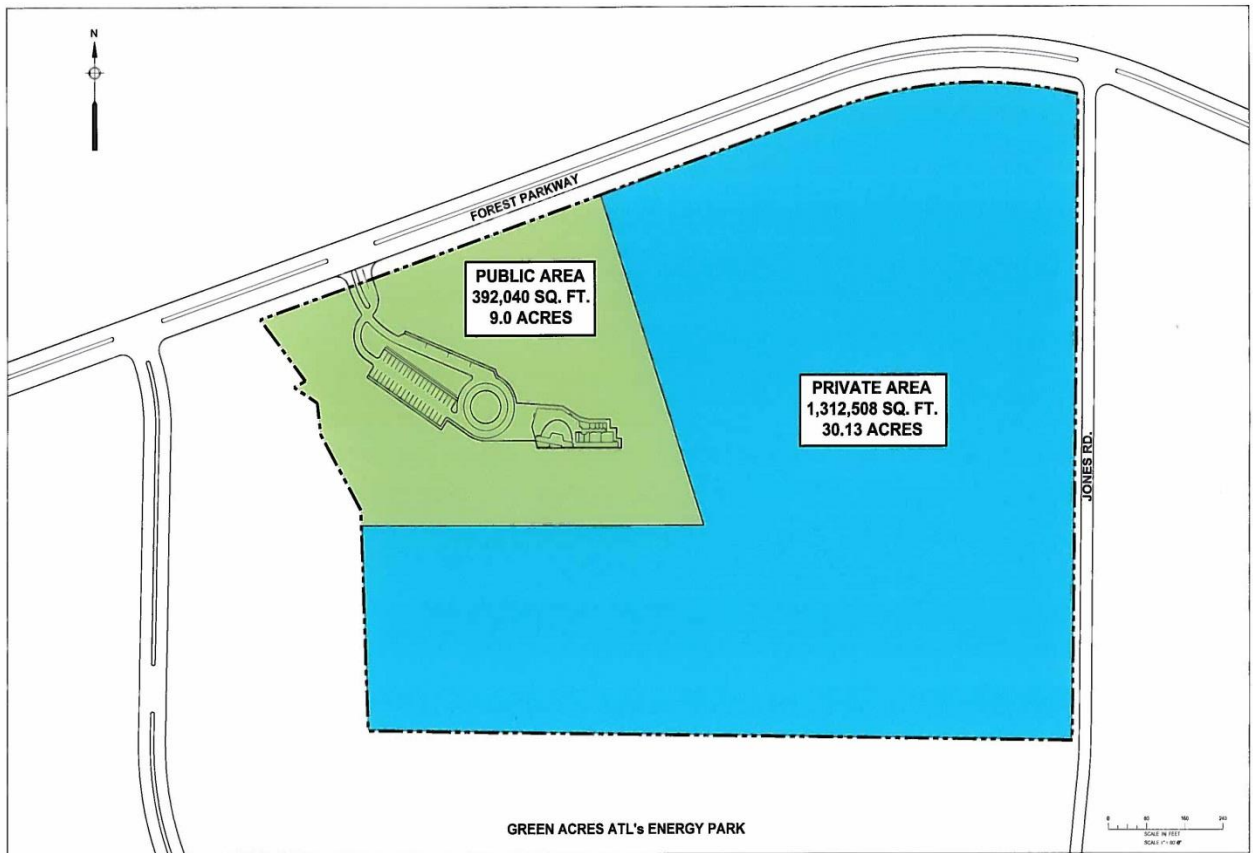
2.6.4.3 Electrical Service – Service providers are available to the site locations. All costs are at the successful Lessee’s sole expense.

2.6.4.4 Natural Gas Service – The successful Respondent will be responsible for the design and construction of infrastructure required to connect any required natural gas source at the Lessee’s sole expense.

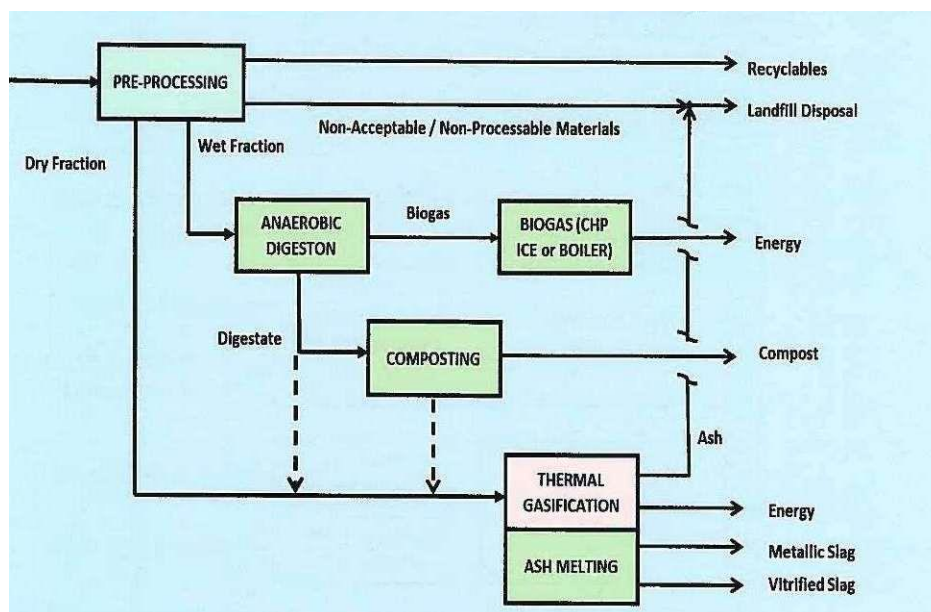
2.7 Design Requirements

Building Design Codes & Standards – All design services shall be in accordance with all applicable laws, Ordinances and standards of the applicable jurisdiction. In addition all design shall conform to the DOA design guidelines as contained at <http://apps.atlanta-airport.com/engineering> guidelines.

Site Map



Integrated Manufacturing With Conversion Technology



Integrated Manufacturing Process

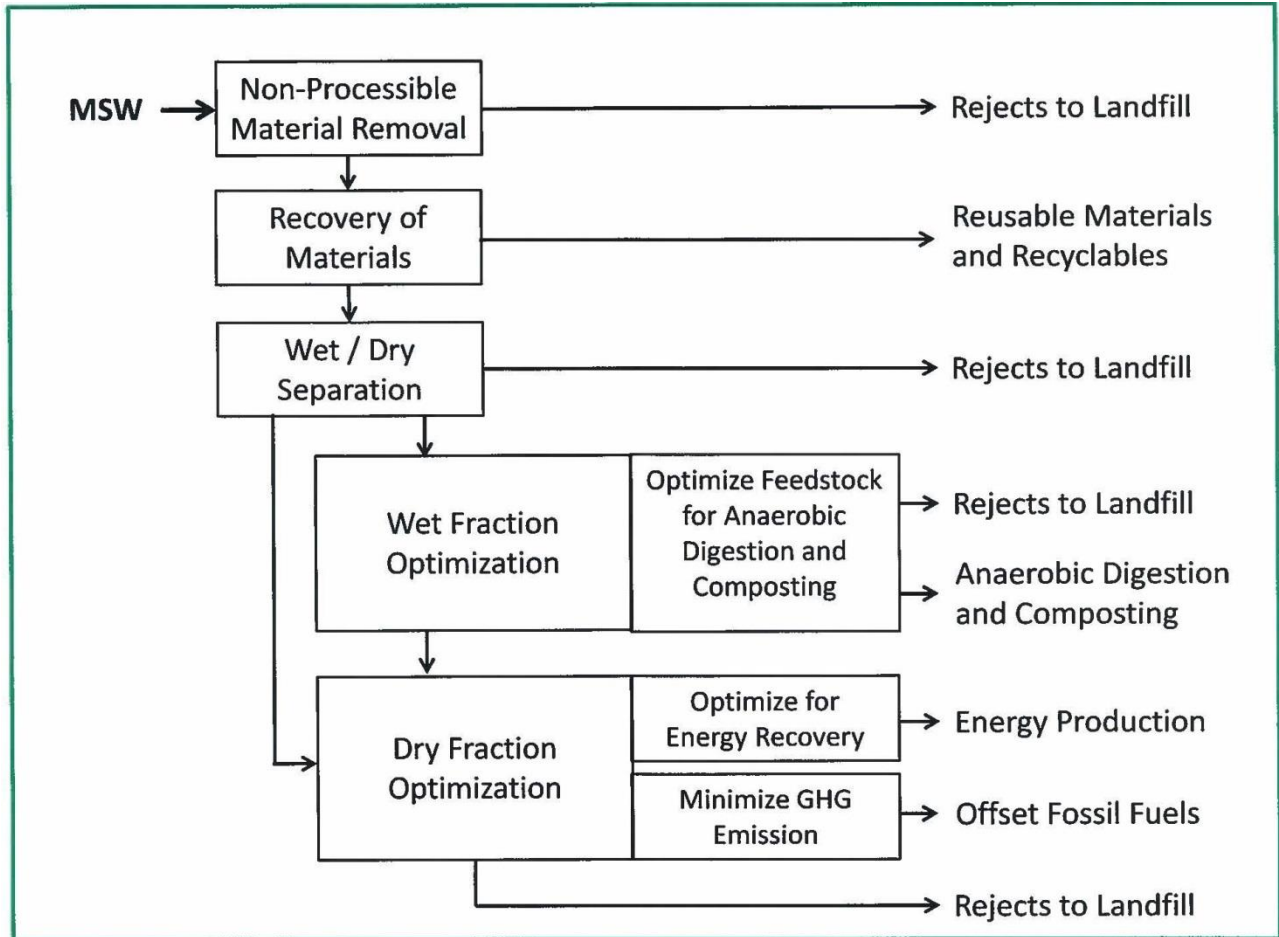


EXHIBIT F

**OPERATIONS AND MAINTENANCE
REQUIREMENTS**

EXHIBIT F

OPERATIONS AND MAINTENANCE REQUIREMENTS

GENERAL OVERVIEW OF REQUIRED SERVICES TO SUPPORT THE ATL ENERGY PARK

The Lessee is responsible for repurposing/reprocessing/recycling all Municipal Solid Waste (MSW) generated from ATL and City of Atlanta Department of Public Works (DPW) and delivered to the ATL Energy Park. As such, the Operation and Maintenance of the ATL Energy Park is a key component of this Ground Lease Agreement. With the exception noted in Section 50 – Force Majeure of the Ground Lease Agreement, Lessee's failure to accept ATL or DPW delivered MSW for a period exceeding seventy two (72) hours are subject to liquidated Damages as contained in Exhibit I to the Ground Lease Agreement.

The Lessee will be responsible for the overall operation and maintenance of the ATL Energy Park for the entirety of the ground lease Term. The operation and maintenance will be provided, except as noted herein, for all facilities, equipment and services in support of the ATL Energy Park.

- 1.0** The work of the Lessee shall include, but not necessarily be limited to, the operation and maintenance, as herein defined of physical building systems, mechanical systems, electrical systems, plumbing systems, roof draining systems, fire protection/alarm systems, CCTV/security systems, specialty systems, miscellaneous equipment, composting and recycling infrastructure and general maintenance. The contractor shall furnish and supply all labor, supervision, administration, customer service, engineers, tools, materials, and equipment necessary, proper, or desirable for the efficient operation and maintenance of the ATL Energy Park.

2.0 **GENERAL PROFESSIONAL SERVICES**

- 2.1.** Hire, train, retain, and develop seasoned on-site personnel to operate and maintain the ATL Energy Park;
- 2.2.** Maintain books and records for the operation and maintenance of the ATL Energy Park. All costs of operating and maintaining the ATL Energy Park shall be borne by the Lessee;
- 2.3.** Maintain current certificates of insurance on vendors, subcontractors and members;
- 2.4.** Provide monthly financial reports consisting of, but not limited to:

- 2.4.1. Bank Statement;
 - 2.4.2. Operating Statement;
 - 2.4.3. General Ledger including material received, material recycled, material composted, etc. (in pounds);
 - 2.4.4. Year-to-Date Variance Report;
 - 2.4.5. Monthly Cash Reconciliation;
 - 2.4.6. Month-to-Date Variance Report
 - 2.4.7. Check Register;
 - 2.4.8. Monthly/Year-to-Date Utility Metrics;
 - 2.4.9. Monthly/Year-to-Date Preventative Maintenance Metrics;
- 2.5.** Prepare specifications and administer the bidding process for Ground Lease and other maintenance related services;
- 2.6.** Undertake, supervise, and process payments for all operational activities of the Serviced Facilities including but not limited to:
- 2.6.1. Janitorial;
 - 2.6.2. Landscaping;
 - 2.6.3. Paving repairs;
 - 2.6.4. HVAC;
 - 2.6.5. General and electrical;
 - 2.6.6. Preventative maintenance program;
 - 2.6.7. Window washing;
 - 2.6.8. Electrical, gas, and water; and
 - 2.6.8.1. Perform all required actions to obtain all utility company energy conservation rebates.
 - 2.6.9. Any other maintenance and or repair activity to ensure quality operation of the ATL Energy Park;

3.0 GENERAL FACILITIES MAINTENANCE SERVICES

- 3.1.** Maintain, initiate, coordinate and supervise all ordinary and extraordinary preventative maintenance, general maintenance, and repair services for the ATL Energy Park in accordance with the manufactures or industry maintenance standards including but not limited to:

- 3.1.1. Interior and exterior lighting;
- 3.1.2. Electrical systems;
- 3.1.3. Plumbing systems;
- 3.1.4. HVAC and other mechanical systems;
- 3.1.5. Elevator and escalator maintenance (if applicable);
- 3.1.6. General repair including painting, upkeep of all interior and exterior signage;
- 3.1.7. Fire protection and safety equipment;
- 3.1.8. Interior and exterior landscaping;
- 3.1.9. Utility service (electricity, gas, water);
- 3.1.10. Janitorial services;
- 3.1.11. Waste and debris management;
- 3.1.12. Maintain common area parking lots, sidewalks and roadways; and
- 3.1.13. Composting and recycling infrastructure.

4.0 Warranties

- 4.1. Maintain, track, file, enforce and administer all claims and periods under Manufacturers', Subcontractors', or Vendors' warranties or guaranties.

EXHIBIT F

OPERATIONS AND MAINTENANCE REQUIREMENTS

GENERAL SPECIFICATIONS AND PROVISIONS

- 1.0 Service Levels: Best-in-Practice Service - Best in Practice Intent.** There can be no better service provided by internal or outside means. The Lessee shall provide level of services, equipment reporting and documentation, inspections, general and preventive maintenance programs in a proactive, professional, and accurate manner. Communication and correspondence shall be timely and efficient. Technical personnel shall be professional and proficient on all aspects of the Ground Lease work. The quality level shall be maintained to the highest level. Should the City's quality inspections or survey indicate otherwise, the Lessee shall take immediate and appropriate corrective action(s).

Best in practice does not simply mean additional resources through additional labor but to the method of delivering services. The Lessee shall provide incentives to foster a positive work environment and demonstrate fiscal responsibility with respect to the Lessee's personnel, subcontractors, and suppliers as well as to the City.

- 2.0 Implementation Goals** – The Lessee shall implement a management program that will provide support for the ATL mission and maximize the level of service and support to the customer community. This program shall:

- 2.1. Employ an innovative, entrepreneurial, and efficient management approach challenging the status quo and traditional methods in formulating and delivering high quality, timely, and cost effective support services.
- 2.2. Implement management strategies that produce an effective response to rapid changes and emergency situations through the prudent adjustment of service performance levels.
- 2.3. Incorporate quality concepts in all aspects of the operations.
- 2.4. Practice dynamic planning, balancing short-term service delivery efficiencies with longer range actions for improved mission support.

3.0 Security Provisions

- 3.1. In addition to the applicable portions of the Security requirements contained in **Exhibit G** of the Ground Lease Agreement the Lessee shall:

- 4.1.1. The Lessee shall provide assistance and cooperation for all authorized inspections, internal reviews, and audits conducted by the City and other agencies that involve matters related to facilities and services in this Ground Lease.
- 4.1.2. Lessee shall ensure that the Authorized Representative is provided means of access to the facility at all times excluding Lessee secure office space.
- 4.1.3. The Lessee shall establish a lock and key control program to maintain and control all keys, access codes and or cards to access locations in the ATL Energy Park. The Lessee shall ensure they secure keys at all times. If the Lessee misplaces or loses one or more keys and the key or keys are considered to be in critical areas or non-critical areas, the Lessee shall be responsible to replace all cores and/or locksets if necessary to restore security to the lock system at the Lessee's cost. The Lessee shall immediately inform the Authorized Representative and have an action plan to replace and ensure such security compromise does not occur again.
- 4.1.4. If by fault of the Lessee, access codes have been compromised, the Lessee shall be required to change all cipher and combination style lock system codes and/or hardware at the Lessee's cost.

5.0 Lessee's On-site Security Procedures

- 5.1. The Lessees' employees and employees of Subcontractors must complete a security requirements training and are required to carry and to visibly display identification badges at all times. Lessee's employees and employees of subcontractors shall immediately report lost or stolen badges to the Authorized Representative.
- 5.2. The Lessee's employees and employees of Subcontractors shall surrender their badge upon termination of employment.
- 5.3. The Lessee's employees and employees of Subcontractors must be aware of any security areas which are to be serviced and special arrangements associated with them.

6.0 Safety Provisions

- 6.1. The Lessee shall be responsible for safety and protection of the Lessee's employees, tenants, and the ATL Energy Park customers.

- 6.2. The Lessee shall be responsible for initiating, maintaining and supervising all safety precautions required in connection with their work in accordance with the applicable portions of the City's Safety and Health Plan (**Exhibit "H"**) of the Agreement; the Occupational Safety and Health Administration (OSHA) and other governing agencies.
- 6.3. The Lessee shall report promptly in writing to the Authorized Representative accidents in connection with the performance of the work which results in death, any injury requiring medical treatment other than first aid administered at the jobsite, or property damage, giving full details and statements of witnesses.
- 6.4. The Lessee shall be required to display appropriate signage to alert the public of unsafe conditions. The use of temporary signs at ATL is a necessary practice. First, and foremost, the Lessee shall use accurate and concise warning signs. Secondly, it is the ATL policy to notify the public, through the use of signs, whenever any of our facilities such as, but not limited to, restrooms, stairwells, restoration areas, equipment, escalators, and elevators are not in service. These signs will be used to direct the public to the nearest equivalent that is in service. The unexpected need for crowd control or other deviation from a normal route shall be provided through the use of temporary signs. The Lessee shall be required to coordinate sign policy changes on an as needed basis.
- 6.5. The Lessee shall be solely and completely responsible for initiation, maintaining, and supervision of safety precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to employees on the work site and other persons including, but not limited to general public who may be affected.

7.0 Protection for the Public and Property

- 7.1. The Lessee shall take all necessary precautions to prevent injury to the public, building occupants, or damage to the property of others.
- 7.2. The storage, positioning, or use of equipment, tools, scraps, trash, and furniture in a manner likely to present a hazard to the public or building occupants by its accidental shifting, ignition, or other hazardous qualities is prohibited.
- 7.3. No corridor, aisle, stairway, door, or exit shall be obstructed or used in such a manner as to encroach upon routes of ingress or egress utilized by the public or building occupants, or to present unsafe or unhealthy conditions to the public or building occupants.

- 7.4. Work shall not be performed in any area occupied by the public unless adequate steps are taken for the protection of the public or employees.
- 7.5. At all times, the work area shall be fenced, barricaded, or otherwise blocked off from the public or building occupants to prevent unauthorized entry into the work area .
- 7.6. When the nature of the work prevents isolation of the work area and the public or building occupants may be in or pass through, under, or over the work area, alternate precautions such as the posting of signs, the use of signal persons, and the erection of barricades or similar protection around particularly hazardous operations shall be used.
- 7.7. When work is to be performed over a public thoroughfare such as a sidewalk, lobby, or corridor, the thoroughfare shall be closed, if possible, or other precautions taken such as the installation of screens or barricades.
- 7.8. Barricades shall be removed upon completion of the work, in accordance with local ordinances.

8.0 Identification Requirements

- 8.1. The Lessee personnel shall wear distinguishing uniform apparel of a design, style and color appropriate to pertinent operations. The uniforms will be collar style shirts. The Lessee personnel shall have visible nametags(s) that include the company's name, the employee's name and service they provide. The Company name will be located over the left breast pocket area. Supervisors shall wear the same style, design, color and name description with the exception that the tag shall indicate "Supervisor". The Lessee shall be responsible for subcontractors and special service Lessees hired to perform or provide services at the ATL Energy Park. These subcontractors shall be required to conform to the same uniform standard as the Lessee.
- 8.2. Failure to uniform personnel properly may result in the removal of the personnel from the site, at the discretion of the Authorized Representative. All costs associated with the removal of personnel shall be borne by the Lessee.

9.0 Lessee Vehicles

- 9.1. Lessee shall provide all motor vehicles, trucks, and other motor driven equipment necessary to perform the work in this Ground Lease and assume all liability for their operation and use. Lessee vehicles for use on ATL property

shall be registered and insured, shall be kept in good repair, and shall be of a type appropriate to pertinent operations and services.

- 9.2. ATL has assumed a leadership role in achieving a reduction in air emissions. ATL has established a phased approach toward achieving the goal of a 100% clean vehicle fleet. It is the Airport's intention to mandate the use of clean vehicles for Work to be performed under this Ground Lease. Any vehicles used by Lessee in performance of work associated with this Ground Lease must meet clean fleet requirements.
- 9.3. Lessee Vehicle Identification: Lessee vehicles shall be uniform in identification markings, to readily distinguish them from common traveling public, tenants, and delivery vehicles. The Lessee vehicles shall have a visible logo on each side of the vehicle that includes the Lessee's company name and service provided (i.e. "Maintenance"). The Lessee shall be responsible for subcontractors and special service Lessees hired to perform or provide services on ATL property.

EXHIBIT F

OPERATIONS AND MAINTENANCE REQUIREMENTS

PROFESSIONAL SERVICES

1.0 Work Management

The City requires the most efficient and effective organization in the industry to manage and maintain the Serviced Facilities. It is the responsibility of the Lessee to provide professional services that reflects the mission statements of ATL.

2.0 Communication

2.1. The Lessee shall maintain effective lines of communication with all elements of the ATL, the ATL Energy Park tenants and the traveling public to ensure flexible, effective support. The Lessee shall:

2.1.1. Proactively participate in defining issues, devising solutions to problems and developing future plans.

2.1.2. Develop and deploy an effective customer satisfaction program through the use of “listening and learning” techniques and customer feedback mechanisms that resolve daily problems, leading to long-term process improvements.

2.1.3. Manage relationships with ATL departments, tenants, local governments, agencies, businesses, and community organizations to enhance Ground Lease effectiveness and promote favorable image of ATL.

2.1.4. Inform all customers of changes in level of service or routine before they occur via the Authorized Representative.

2.1.5. The Lessee shall maintain a Contact List of names, emergency telephone numbers and cellular telephone numbers. This list shall be submitted to the City prior to Ground Lease start date and resubmitted as necessary during the Ground Lease period.

3.0 Coordination

3.1. The Lessee in the course of performing their services will be required to interface with other Lessees, ATL personnel, and facilities groups at ATL to ensure continuity of service and proper coordination of maintenance

activities. The Lessee is responsible to coordinate all activities with all affected parties, including, but not limited to, general maintenance efforts, repairs, equipment shut-down, emergency responses and facility operation functions.

- 3.2. The Lessee should anticipate meeting with the Authorized Representative monthly for up to two hours to review operating status, specific service issues, upcoming events, etc., as required.

4.0 Performance

- 4.1. The Lessee shall perform all of its obligations and functions under this Ground Lease in accordance with and in adherence to the highest industry standards. The Lessee shall coordinate its activities with the needs and requirements of the City. All services, staff, equipment, and systems shall be maintained in an efficient and economical manner.
- 4.2. The City reserves the right to refuse and/or return, without penalty to the City, any service, product, and/or items provided by the Lessee which is of poor or unsatisfactory quality or contains defective workmanship or material or fails to meet the standards specified herein.
- 4.3. The Lessee's staff will maintain daily shift operational logs, in a form satisfactory to the Authorized Representative, for the operation of systems and the reading of gauges, meters and other operational condition indicators. Copies of the logs, or summaries in form satisfactory to the Authorized Representative when requested.
- 4.4. The Lessee will monitor daily consumption and use of purchased utilities. The Lessee will analyze consumption for the purpose of detecting and correcting abnormal consumption of utilities. The Lessee shall advise the City of any actions that can be taken to reduce consumption of utilities or increase the service life of systems.
- 4.5. The Lessee's on-site staff and home office support personnel shall develop, modify, and execute operating plans and procedures pertinent to the systems on a routine basis in order to assure optimum operational efficiency.
- 4.6. The Lessee shall maintain its work areas in a neat and orderly fashion, keeping them free from obstacles.
- 4.7. The Lessee's employees shall respond immediately to all emergency conditions at the work site in such a manner as to reduce or eliminate any and all injury, loss of life and damage of property. To that end, the Lessee's employees shall exercise prudent judgment with regard to the operation and

maintenance of the work site during emergency conditions and shall make timely notifications to the Authorized Representative and operating personnel to expedite the resolution of such conditions. The Lessee shall immediately comply with any directive issued by the Authorized Representative to resolve the emergency.

- 4.8. The Lessee shall maintain, repair, and keep in good operating condition all systems of the ATL Energy Park. Maintenance shall ensure efficiency, reliability, and minimal unscheduled interruption of service of the equipment. Operating policies and procedures shall incorporate provisions and guidelines set forth in the manufacturer's maintenance and operating instructions and/or submittal data. The Lessee shall plan and control scheduling of all preventive and corrective maintenance tasks, as per the systems or manufacturers specifications.
- 4.9. The Lessee's maintenance scheduling procedure shall include the requirements to accomplish the task, (e.g. special lubricants, tools, parts, materials, etc.). It shall also include a quality assurance and quality control program to ensure that the scheduled preventive maintenance tasks are, in fact, properly completed and completed on schedule.
- 4.10. Records shall be maintained on the job site and a report submitted monthly to the Authorized Representative for all scheduled and unscheduled maintenance.
- 4.11. The Lessee shall maintain at the site current maintenance and repair procedures and complete parts lists, manuals, as-built drawings, maintenance and operations manuals, warranties, and any other documentation needed to attain the safe, efficient, and continued operation of all systems and equipment.
- 4.12. The Lessee shall maintain at the site an inventory of tools, equipment, lubricants, operating supplies, custodial supplies and spare parts. The inventory shall be updated based upon operating experience. The Lessee will not permit tools, equipment, supplies or materials maintained or purchased for the accomplishment of the work to be used by any other person, agency, office or Lessee.
- 4.13. The Lessee shall provide general maintenance of the ATL Energy Park to include painting, wall and floor repair, pest control, revolving doors, automatic doors, roll-up doors, doors and hardware, roof repairs, skylight/smoke vents, toilet accessories, loading dock equipment, folding partitions, and minor repairs.

- 4.14. The intent of the Agreement is to place with the Lessee the full and complete responsibility for performing the operation and maintenance functions of the ATL Energy Park. Expressly included within the Lessee's responsibility are all labor costs for any and all operation and maintenance of the facilities.
- 4.15. Maintenance personnel shall be on site, as necessary, for the satisfactory performance of the work, as well as for all scheduled maintenance.
- 4.16. The Lessee, as part of their responsibilities, shall implement and maintain rigid control to assure against wasteful consumption and/or pilferage by their employees or other persons of the supplies and materials processed. The Lessee shall be held fully responsible for any irregularity or misuse determined to be caused by his employees.
- 4.17. The Lessee shall furnish to the Authorized Representative manufacturer's published product catalogs, including any produced in CD-ROM or diskette format, for each manufacturer and shall continue to furnish updates throughout the term of the Ground Lease, as revised and updated versions are published by the manufacturer(s):
- 4.18. Hazardous Materials: The Lessee shall use products, cleaners, and materials that are not considered hazardous and that will not damage exposed surfaces. Lessee will comply with the Hazardous Materials and Differing Site Conditions contained in the Ground Lease Agreement at Section 2, Use of Premises at all times during the term of this Ground Lease Agreement.
- 4.19. MSDS binders shall be maintained at the Lessee's expense throughout the term of the Contract. Binders shall be updated when the manufacturer issues an update or when an item is requested that is not on Contact list.
- 4.19.1. The Lessee shall provide proper storage cabinets, containers, and transporting means of hazardous materials/flammable materials. Proper NFPA labels, cautions signs, and warning labels shall be visible and secured to items.
- 4.20. Dispose of waste materials lawfully. Containerize hazardous and unsanitary waste materials separately from other waste. Mark containers appropriately and dispose of legally, according to regulations. All work, including contact with and handling of hazardous materials and wastes, the disturbance of dismantling of structures or equipment containing hazardous materials and/or the disposal of ordinary and hazardous materials and wastes shall comply with applicable Federal requirements including 29 CFR 1910/1926, 40 CFR 260-265, 40 CFR 61, 49 CFR 171-179, and applicable state and municipal safety and environmental requirements. Submit and maintain copies of permits,

certificates, and manifests that indicate hazardous waste has been disposed of in compliance with the regulations. Where there is a conflict between applicable regulations, the most stringent shall apply.

5.0 Quality Control

- 5.1. The Lessee shall establish, implement and maintain a proactive quality control program that reflects and incorporates quality control processes for all technical staff and quality management practices for all supervisory staff.
- 5.2. The Lessee shall maintain production and quality control records for review by the Authorized Representative.
- 5.3. If any of the services do not conform to Ground Lease requirements, the Authorized Representative may require the Lessee to perform the services again in conformity with Ground Lease requirements. If the service or task cannot be corrected, the City will be notified. A plan for future performance to meet requirements shall be submitted in writing with a detailed plan of action to ensure the issue will not recur.
- 5.4. Quality of work will be required, including full performance of specified daily services, starting the first official working day of the Ground Lease period. The Lessee shall perform all services to maximum capacity up to and including the last Ground Lease day. The ATL provided stocks, infrastructure, buildings, structures, vehicles, supplies, and the like in use at the termination of the last official work day at the ATL Energy Park SHALL BECOME THE PROPERTY OF THE CITY.

6.0 Lessee Personnel

- 6.1. The Lessee shall provide competent personnel at all times during the performance of this Ground Lease to contend with any such situations including emergency, disaster, act of God, and other such occurrences that should require immediate and long-term attention.. All employees of the Lessee shall have the ability to understand, take direction, speak, read and communicate in fundamental English. The City reserves the right to spot check employees of the Lessee to enforce this requirement at anytime during the course of this Ground Lease.
- 6.2. The Lessee shall provide and maintain technically competent supervisory personnel. The Lessee's supervisor(s) must have a minimum of seven years technical experience and a minimum of three years in supervision.

- 6.3. A supervisor shall be on the property or readily available whenever employees are performing their duties. The supervisor may be a working supervisor.
- 6.4. The Lessee's supervisor(s) shall have the ability to perform tasks as required to complete work schedules. Their primary role is to direct the work effort, oversee the work functions, and audit the performance of others to determine the completeness and quality of services.
- 6.5. The Lessee shall satisfy the Authorized Representative that the Lessee's supervisors: are fully licensed and trained; have had extensive on-the-job experience in each discipline under their supervision; have an intimate knowledge of the various tasks, equipment, and materials in order to properly train and direct the employees in their individual tasks. This also includes the ability to use computers, associated hardware, business equipment, etc. The Authorized Representative will actively participate in, and have the right to object to, the selection of individuals responsible for the management, maintenance, and operation of the facilities.

7.0 Training Requirements

- 7.1. The Lessee shall develop and implement a comprehensive program for training personnel in the requirements of the Operation and Maintenance of the ATL Energy Park. The training program shall include well-defined and developed training methods, materials (instructor and trainee) schedules, and evaluation plans. Training evaluations shall be designed to evaluate training effectiveness and knowledge transfer.
- 7.2. The Lessee shall report on all training conducted each month in the monthly report.
- 7.3. The Lessee shall provide a summary of the monthly training in the annual report.

8.0 Ground Lease Staff

- 8.1. The Lessee's principals shall be responsible for the development and implementation of long-range plans, day-to-day operation of the facilities, and institution of programs including equipment operation, preventive maintenance, energy conservation, energy management, budgeting and manpower utilization. The City can reasonably demand removal and replacement of any employee of the Lessee's staff.
- 8.2. The Lessee's management personnel shall meet the following standards:

- 8.2.1.1. To be familiar with all Ground Lease requirements and to ensure that they are properly performed.
 - 8.2.1.2. To be responsible for the performance of a qualified and reliable staff for all scopes and services.
 - 8.2.1.3. To evaluate all equipment and systems.
 - 8.2.1.4. To maintain an effective energy conservation program.
 - 8.2.1.5. To carry out policies and procedures concerned with safety and work methods.
 - 8.2.1.6. To ensure that the on-site staff conforms to all applicable laws, ordinances, codes, and regulations.
 - 8.2.1.7. To establish a program for the acquisition, storage and serviceability of all operating materials, tools and equipment.
 - 8.2.1.8. To be responsible for maintaining a high quality of service when subcontracting work.
 - 8.2.1.9. To ensure that work responsibilities are allocated properly among staff by developing and implementing manpower schedules, work methods and procedures designed to obtain efficient operations.
 - 8.2.1.10. To be responsible for the establishment of performance standards for each phase of work and for adherence to standard policies and quality levels.
 - 8.2.1.11. To regularly and systematically analyze the performance effectiveness of the scope of services to initiate corrective action when necessary.
- 8.3. The Lessee shall maintain their workforce in a technically competent manner and to the level of industry “best in practice” requirement. They will be well trained in their respective activities, and maintain the appropriate efficiency and customer services attitude to meet the service demands at ATL.
- 8.4. The Lessee shall comply with all state and federal regulations concerning maximum work hours, environmental conditions and other employee considerations.

- 8.5. The Lessee and all its personnel shall maintain a good attitude and behavior. All Lessee personnel must exhibit high character, cooperative spirit, and congenial attitudes at all times they are on the ATL premises.
- 8.6. The Lessee shall be responsible for maintaining satisfactory standards of employee competency, conduct, courtesy, appearance, honesty, and integrity, and shall be responsible for taking such disciplinary action with respect to any employee, as may be necessary including removal from the site.
- 8.7. At the Authorized Representative's request, the Lessee shall immediately remove from the premises or dismiss any employee found unfit to perform duties due to one or more of the following reasons:
 - 8.7.1. Neglect of duty.
 - 8.7.2. Disorderly conduct, use of abusive or offensive language, quarreling, intimidation by words or actions, or fighting.
 - 8.7.3. Theft, vandalism, immoral conduct or any other criminal action. selling, consuming, possessing, or being under the influence of intoxicants, alcohol, or illegal substances that produce similar effects while on duty.
 - 8.7.4. In possession of any type of weapon on ATL property.
 - 8.7.5. In possession, either internally or externally, of any illegal drug(s) or substances.
 - 8.7.6. Organizing or participating in any form of gambling.

9.0 ATL Energy Park Expansion

- 9.1. It is expected that the initial build-out of the ATL Energy Park, in accordance with the Ground Lease Agreement, Exhibit E, Background and Program Requirements, will result in achieving a fifty (50%) to sixty (60%) percent of MSW repurposing/reprocessing/recycling delivered from ATL and DPW by March 2017. Lessee is required to continue to develop the ATL Energy Park to achieve the ninety (90%) diversion of MSW repurposing/reprocessing/recycling delivered from ATL and DPW by 2020. Lessee shall comply with the following:
 - 9.1.1. If the expansion is the addition of infrastructure which design has been previously reviewed and accepted no further design review is required;

- 9.1.2. If the infrastructure is a new component the Lessee must comply with the design review requirements contained in the Design and Construction Agreement; and
- 9.2. The ATL Energy Park must remain a “cutting edge” facility. During the term of this Lease Agreement, Lessee is required to implement processes, methodologies, and infrastructure which will keep the ATL Energy Park at the fore-front of sustainable facilities.
- 9.3. Lessee, if requested by City, must aggressively collaborate and engage with local Universities and “green” businesses to promote field research and support for the proposed Education/Entrepreneur facility.

EXHIBIT G

AIRPORT SECURITY REQUIREMENTS

EXHIBIT G

AIRPORT SECURITY REQUIREMENTS

1. **Airport Security Requirements.** Lessee shall at all times conduct all operations under this Lease Agreement in a manner to avoid the risk of loss, theft, or damage by vandalism, sabotage or any other means to any equipment, materials, work or other property at the Jobsite. Lessee shall continuously inspect all equipment, materials and work to discover and determine any conditions which might involve such risks and shall be solely responsible for discovery, determination and correction of any such conditions.

Lessee shall comply with the Transportation Security Administration (TSA) and the City's security requirements for the Airport. Lessee shall cooperate with the TSA and the City on all security matters and shall promptly comply with any Project security arrangements established by City. Such compliance with these security requirements shall not relieve Lessee of its responsibility for maintaining proper security for the above-noted items, nor shall it be construed as limiting in any manner Lessee's obligation with respect to all applicable state, federal and local laws and regulations and its duty to undertake reasonable action to establish and maintain secure conditions at the Jobsite.

2. **Preventing Unauthorized Access.** The Airport has been secured to prevent unauthorized access to the Air Operations Area (AOA), the secured area, the sterile area and other controlled areas of the Airport. Lessee shall cooperate to the fullest extent with the TSA and DOA to maintain the integrity of the security system. The Lessee shall control its operations and the operations of its subcontractors and all suppliers so as to provide for the free and unobstructed movement of aircraft, aircraft operations personnel and equipment in the AOA, the secured area, the sterile area and other controlled areas of the Airport as defined herein.
3. **Transportation Security Administration/Responsibility of Lessee.** In order to comply with the TSA and DOA security requirements, Lessee shall be responsible for informing itself as to current, ongoing, and changing requirements, and for remaining in compliance with those requirements throughout this Lease Agreement. The security requirements are as follows and from time to time may change as required by the TSA and/or DOA.
4. **Security Identification Display Area (SIDA).** The Security Identification Display Area (SIDA) is defined in the Airport Security Program as any area that requires individuals to continuously display Airport issued or Airport approved identification badges. Personnel associated with construction contracts in the AOA secured area or sterile area of the Airport shall display SIDA badges at all times. The TSA and the DOA require all personnel to display SIDA badges in areas controlled for security purposes at all times.

4.1 FBI/CHRC Checks. To obtain a SIDA badge, each individual must successfully undergo a Federal Bureau of Investigation (FBI) fingerprint based Criminal History Records Check (CHRC) which must reveal no convictions of disqualifying crimes within the last ten years as defined in Transportation Security Regulation, TSR Part 1542.209. Each individual must also attend a security awareness course conducted by the DOA Security Division. Each employee must present two forms of Identification prior to the badging process. At least one form of identification must have been issued by a government authority and at least one must contain a photograph. Lessee shall be responsible for all fees associated with obtaining a SIDA badge, (i.e. badge and fingerprint fees as determined by DOA). The current cost for the CHRC is \$60.00 per individual. The current cost for badge is \$60.00 per individual. Costs for lost badges is \$200.00. Lessee shall contact the DOA Security office at (404) 530-6667 prior to sending individuals to the DOA Security office for badging. Lessee/Escorting Requirements are specified in subsection below.

5 Displaying Badges. Employees and those of all subcontractors must display a DOA issued badge showing Lessee's name and an employee number. All personnel shall be required to wear this badge at all times while within the secured areas of the Airport.

6 Badging Records and Process. Lessee shall maintain an up-to-date record of all badge holders showing name, address, sex, height, weight, color of eyes and badge number. Lessee will be required to furnish this information to the DOA upon request.

6.1 The Badging process may begin upon the Lessee's receipt of a formal Notice to Proceed (NTP) from the City and may take up to fourteen (14) calendar days to complete. Access to secured areas shall be denied until such time as the Lessee has completed the badging process.

6.2 If applicable, an Administrative NTP may be presented to the DOA Security Division by the Lessee in order to initiate the badging process for the Lessee's employees.

6.3 The Lessee shall appoint one of its employees as an Authorizing Agent and submit his or her name, on the Lessee's letterhead, to the DOA Security Division. The submittal letter shall indicate the Project Name, Lease Agreement Number, Point of Contact, Telephone and Fax number, list of subcontractors including subcontractors' Authorizing Agent nature of the work to be performed by Lessee, and each subcontractor, location and duration, time frame(s), and justification for vehicle access, if required. A copy of the Lessee's Insurance Certificate shall accompany the letter. Once badged, the Lessee's Authorizing Agent shall be responsible for the badging process of his/her company employees.

6.4 Each Subcontractor identified in the Lessee's letter shall appoint one of its employees as an Authorizing Agent and submit his or her name through the Lessee, to the DOA Security Division. A copy of the Subcontractor's Insurance certificate shall accompany the letter. Once badged, the Subcontractor's Authorizing Agent shall be responsible for the badging process of his/her company employees.

- 6.5** Processing time for badging, at the badging office after completion of the CHRC, will last approximately one (1) hour. Processing time for Authorizing Agents will last an additional hour for briefing by the DOA Security Division. Authorizing agent briefing sessions will be conducted only on Mondays, Wednesdays and Fridays at 11 a.m. in the DOA Security office.
- 6.6** Each person applying for badging shall complete and submit all forms required by the DOA Security Division. All required forms will be provided to the authorizing agent at the time of the briefing at the DOA Security office.
- 6.7** Each person applying for a badge shall also submit to fingerprinting upon the submittal of said forms. Fingerprints will be utilized for a ten (10) year Federal Bureau of Investigation (FBI) based criminal history records check for each individual employee.
- 6.8** Pursuant to TSR § 1542.209 certain Felony convictions within the most recent ten (10) year period, may cause disqualification. A list of disqualifying Felony convictions is available in the offices of the DOA Security Division and in the TSR Regulations.
- 6.9** The Authorizing Agent will be notified when the results of the fingerprint checks are completed. Upon notification and approval, Lessee's and subcontractor's approved employees may return to the DOA Security Office, during posted hours, for photographing and badging. This process may take up to sixty (60) minutes.
- 6.10** Badges issued to Lessee and subcontractor employees and agents shall expire upon the happening of one (1) of the following events, whichever occurs first:
- 6.10.1 Completion of Lease Agreement or subcontract, unless extended by the City;
 - 6.10.2 Expiration of Insurance coverage, as indicated on the Lessee's Insurance certificate; or
 - 6.10.3 Employee's driver's license expiration date;
 - 6.10.4 Two (2) years from the issuance of the badge.
- 6.11** Lessee and its subcontractor shall be responsible for making arrangements, ahead of time, to extend badges, when necessary. A letter, directed to both the DOA Assistant General Manager, Facilities and the DOA Security Manager, explaining the reason(s) for the badge extension on Lessee's letterhead will be required. Extension requests must be approved in writing by the DOA prior to extension of the badges.
- 6.12** Lessee's questions concerning Airport Security shall be directed to (404) 530-6667.
- 7 Drivers.** All drivers operating vehicles within the AOA must obtain, in addition to the DOA Security badge, a DOA Ramp Certification. Ramp Certification will be evidenced by a "D" sticker placed on the face of the badge by the DOA Security department.

7.1 Ramp Certification. City will require Airport Driver Safety Training and Ramp Certification for all personnel required to operate a motor vehicle in the AOA. This can be obtained by completing an Airport Driver Safety Training Course administered by the Airport Operations Division. These drivers shall only operate vehicle on the approved NLVR's & Aprons, excluding the Aircraft Movement Area. Lessee shall contact Airport Operations, at (404)530-6620 during normal business hours to schedule the training session.

7.2 Except where noted, all vehicles operating within the AOA shall carry a minimum liability insurance coverage amount of TEN MILLION DOLLARS (\$10,000,000.00).

7.3 Lessee shall mark all vehicles and construction equipment, including those of subcontractors, in a manner as required by the Department of Aviation and consistent with Transportation Security Regulations (TSR).

7.4 All vehicles operating within the AOA must display permanent signage, legible and visible from a sight distance of five hundred (500) feet on both sides of the vehicle. MAGNETIC SIGNS ARE PROHIBITED FROM USE IN THE AOA.

8 Protocols for Lessee Escorting. Prime Lessee must incorporate escorting protocol with Security Plan submitted for approval by the Security Manager. The Security Manager must approve any exceptions. Lessee must attach a map of work area(s) and routes to access the work area(s) to project security plan submitted to the Aviation Security Division for approval. Lessee may contact DOA Security Manager at (404) 530-6667 during normal operating hours. These requirements cover security escorting of unbadged personnel through airport security gates. The requirements for escorting onto the Aircraft Movement Area (AMA) and for crossing-guards on the airfield are included in the Technical Specifications.

8.1 All escorted vehicles and personnel must remain under the direction of authorized escorting personnel at all times.

8.2 Lessee and escorted personnel shall have no Terminal or Concourse access.

8.3 Escorting is limited to an Airport SIDA badged prime Lessee or an Airport SIDA badged escorting subcontractor approved by the Security and Operations Managers to perform escorting duties. The individuals involved in escorting shall perform no other services other than escorting while in service. No other subcontractors will be allowed to escort any vehicle(s).

8.4 Escorting person(s) must have a SIDA badge.

8.5 Designated badged prime Lessee employees approved or badged escorting subcontractor must escort prime Lessee employees and subcontractors' employees to all work sites. Once at the work site, badged employees, prime or

subcontractors', may supervise unbadged employees, not to exceed five (5) employees per one (1) SIDA badged employee.

8.6 All personnel (badged or escorted) must have an employee photo ID displayed on the outermost garment, waist high or above. The employee badge must contain the employee's name, Lessee's name and project number or name. All escorted personnel must remain under the control of person(s) with an Atlanta SIDA badge at all times while in the SIDA.

8.7 Maximum vehicular escort—one (1) prime Lessee vehicle or approved badged escorting subcontractor is permitted to escort two (2) subcontractor vehicles.

8.8 All vehicles requiring escort must access and egress the AOA through Pre-approved gates. Vehicles requiring escort shall not be permitted access or egress through any other entry or exit point within the AOA for any reason whatsoever.

8.9 All escorted vehicles must obtain a permit, valid for up to ten (10) hours, at Gate 59. The obtaining of a permit, however, shall not relieve a vehicle from the requirement of being escorted as set forth herein.

8.10 In the event an escorted vehicle requires a time limit extension, the vehicle, and its original operator, must return to Gate 59 to obtain a time limit extension to complete work in the AOA secure or sterile area. Time limit extension shall not exceed an additional ten (10) hour period under any circumstances.

9 Construction Lease Agreements Within Sterile Area (Inside Terminal, Concourses)

9.1 Highest level of Security required.

9.2 All employees of prime Lessee and subcontractor, must be badged to work in the sterile area.

9.3 If escorting of unbadged Lessees and or subcontractors is required, an approved sponsor agency (DOA, AATC, IAC, HACM, HCM, etc.) must perform escort full time.

9.4 For any work requiring access to the sterile area (beyond the Passenger Screening Checkpoint area and on Concourses), a tool inventory must be conducted daily by the prime Lessee or designated representative. A copy of this inventory should be provided to the construction manager or project manager for verification. In general, tools will not be allowed to pass through the checkpoint area.

10 Restricted AOA Access. Lessee shall allow passage into the AOA or secured area through its access point to persons, vehicles, and equipment displaying identification of the DOA or provide an escort for each person or vehicle not displaying proper identification. Escort

vehicles must be insured as specified per Exhibit D, Insurance and Bonding Capacity. Escorted vehicles need not carry the aforementioned coverage but must carry the minimum amounts of insurance required by Georgia Law. However, Insurance coverage of escort vehicles must provide coverage as specified by Exhibit D for vehicles being escorted.

11 Visual Aids. In the event of the possibility of contact with the AOA or secured area, Lessee shall establish a system of visual aids for marking and delineating the limits of required clearances adjacent to active runways, taxiways, and NAVAIDS during both day and night time work, subject to City's approval prior to the start of any work under this Lease Agreement. The approved system of marking and delineating shall be installed, maintained and protected at all times.

12 Tools and Materials. Lessee shall create and maintain an inventory of all tools and materials utilized within the SIDA, terminal building, Federal Inspection Service (FIS), and AOA.

12.1 All tools and materials shall be stored and maintained in a secured manner to prevent unauthorized use, within pre-designated areas within the secured areas of the airport. Storage designations shall be obtained by the Lessee and/or subcontractor, prior to mobilization, by contacting the DOA Properties Division at (404) 209-2945. Change requests for storage designation may be approved only through the DOA Properties Division with notification and concurrence from the DOA Security Division. Failure to comply with this requirement may result in the termination of Lessee's or subcontractor's contract and disqualification from working on construction contracts within secured areas of the Airport.

12.2 All tools and materials must be secured to prevent unauthorized use at all times within the secured areas of the Airport and/or the AOA. Failure to comply with this requirement may result in the termination of Lessee's or subcontractor's contract and disqualification from working on construction contracts within secured areas of the Airport.

12.3 Any and all job-specific or unusual tools and/or materials shall be presented to the security authority at point of entry gate when accessing and/or egressing the SIDA and/or AOA. Failure to comply with this requirement may result in the termination of Lessee's or subcontractor's contract and disqualification from working on construction contracts within secured areas of the Airport.

12.4 All vehicles shall remain subject to search while within the secured areas of the Airport and/or the AOA at all times. Vehicles may also be searched prior to entry to the secured areas of the Airport. The possession of weapons and other prohibited items may result in criminal or civil charges in accordance with applicable laws.

13 Terminal/Curbside. A maximum of two (2) Lessee vehicles or two (2) subcontractor vehicles may be permitted in a work area at any given time, subject to the approval of the Atlanta Police Department, and the DOA Security. In the event one (1) Lessee vehicle is present,

then no more than one (1) subcontractor vehicle may be present at the same time, and vice versa.

13.1 Debris removal may be allowed from curbside with special permission by the DOA Security Department.

13.2 When parked at curbside, at least one (1) badged employee must remain with the vehicle at all times. Vehicles must be removed as expeditiously as possible in all cases.

13.3 Areas surrounding vehicles accessing curbsides must be kept clean at all times.

13.4 For purposes of obtaining Terminal or Curbside access, the APD Airport Section shall be contacted by dialing (404) 530-6630 24 hours in advance of the desired access time.

14 Staging Areas. The Lessee's Construction staging area shall be identified on the plans.

15 Federal Inspection Service Areas. For any or all work conducted within Federal Inspection Service (FIS) areas, Lessee shall submit FIS Authorization requests to the **U.S. Customs Service (404) 765-2300**. The request shall detail the names of employees, description and area of work, work schedule, and any other relevant information to the DOA Security Department.

15.1 Lessee shall be responsible for obtaining the appropriate approvals and special SIDA badge FIS access decals from the appropriate Federal authorities. Special SIDA badge FIS access decals will not be required in if one (1) or more U.S. Customs Agent(s) are present at the work site at all times.

16 Security Checkpoints. Lessee and subcontractors shall maintain awareness among all employees, and at all times, that all Security Checkpoints are now under Federal jurisdiction rather than privately contracted Security agents. In general, contractors will not be allowed to carry tools and construction materials through the passenger security screening points.

16.1 Questions regarding Federal Security Checkpoints shall be directed to (404) 763-7437 or (404) 530-2150.

EXHIBIT H

SAFETY AND HEALTH PLAN

EXHIBIT H

SAFETY AND HEALTH PLAN

1.0 Safety and Health Plan. The City of Atlanta (“City”) has established this Safety and Health Plan (“Plan”) to promote safety and to minimize and control hazards and risks associated with projects at the Airport. Lessee is solely responsible for developing a Safety and Health Plan which provides protection to Lessee’s employees, facility tenants and property, City personnel and property, and the Serviced Facility customers and visitors. Lessee is required to develop and submit to the City’s Authorized Representative Contractor’s proposed Safety and Health Plan. City’s Authorized Representative will review the draft Plan and provide any comments regarding such Plan. City’s Authorized Representative comments do not constitute “approval” or the Plan. Lessee is solely responsible for ensuring the adequacy of safety measures at the Serviced Facility.

2.0 General Requirements. The substance of the Plan addresses:

- 2.1 Periodic inspection by the Authorized Representative(s) of Lessee's Work, Jobsites and storage areas to assure safe conditions and practices.
- 2.2 Provisions for Lessee’s training of all Employees in all Plan requirements.
- 2.3 Immediate reporting to City’s Authorized Representatives of any death, injury or damage to property at the Serviced Facility or any other property adjacent to or near the Airport at which Work under this Lease Agreement is performed.
- 2.4 Full cooperation in the conduct of inspections by City’s Authorized Representatives, governmental agencies and other agencies of competent jurisdiction, e.g. OSHA. Copies of citation notices received by Lessee(s) from such agencies must be submitted to the City’s Authorized Representative immediately upon receipt.
- 2.5 Compliance with all Governmental Requirements and directives of governmental and other agencies of competent jurisdiction, e.g. OSHA.
- 2.6 Use of approved regulatory and City required safety Equipment and protection devices as described in the Plan.
- 2.7 Immediate correction by Lessee(s) of any unsafe conditions or unsafe acts by their Employees.
- 2.8 Medical surveillance requirements for personnel exposure to hazardous substances, e.g. radiation badges.
- 2.9 Safety requirements and procedures for decontamination facilities, e.g. protective clothing and warning signs.
- 2.10 The use of forms and other information attached to this Plan, or such other forms or versions of those forms that City may, from time to time, direct Lessee to use.

3.0 Compliance. This Plan is part of the Lease Agreement Documents. Lessee must, at all times, comply with all aspects of this Plan as well as ensure that all employees comply with the provisions of this Plan. Lessee must include the obligations of this Plan in all of its written employment agreements, Subcontracts, purchase orders and any other documents utilized by it in obtaining goods and services relating to Lessee's performance of this Lease Agreement and Work on the Project. The failure of Lessee to submit any reports required by this Plan or to violate any of its provisions shall be sufficient cause to terminate Lessee's right to proceed with the work.

4.0 Lessee Obligations. The Lessee acknowledges that the effectiveness of this Plan depends on the active participation and cooperation of the Lessee, its Subcontractors/Subconsultants and all Employees.

4.1 General. Lessee must:

Develop a Site-Specific Safety Plan that addresses all Work activities, i.e. fall exposures, excavations, cranes, etc. This Site-Specific Safety Plan must be submitted to the Authorized Representatives and reviewed prior to start of the Work.

4.1.1 The Lessee shall identify an Employee as the Lessee's designated Safety Representative who shall have the requisite of a minimum OSHA-30 Safety certification. The Lessee's and subcontractor's workforce must all have a minimum of OSHA-10 training.

4.1.2 Lessee Ratings

Lessee shall not, without the prior written approval of Authorized Representative, exceed the following safety rating for the previous year.

Interstate EMR:	1.00
State EMR:	1.00
LWDC:	2.00 (Consistent with National Average)
OSHA Recordable:	5.00 (Consistent with National Average)

Subcontractor Ratings

Lessee shall not, without the prior written approval of Authorized Representative, subcontract with any entity which exceeds the following safety rating for the previous year.

Interstate EMR:	1.00
State EMR:	1.00
LWDC:	2.00
OSHA Recordable:	5.00

- 4.1.3 Comply with applicable Governmental Requirements, industry standards, and Airport Regulations and Requirements, as outlined in this Plan and the Lease Agreement Documents.
- 4.1.4 Indemnify the City for any fines or penalties imposed on the City as a direct result of Lessee's failure to comply with any safety requirement referenced in 4.1.2.
- 4.1.5 Provide safety data information to the Authorized Representative, as required.
- 4.1.6 Include in their Site-Specific Safety Plan the requirement for a 100% fall protection program for all work performed 6 feet or more above ground or finished floor level.
- 4.1.7 Include operating criteria for motorized equipment and an emergency evacuation plan.

4.2. **Additional Lessee Responsibilities.** Lessee is ultimately responsible for accident prevention and Jobsite safety. This responsibility may not be delegated to Subcontractors, or other Persons.

- 4.2.1 Lessee shall submit to the City, a history of experience and qualifications of the person who will manage the Lessee's safety functions on site.
- 4.2.2 Report all accidents and incidents to the City's Authorized Representative on a State of Georgia First Report of Injury Form. Incident Reports must be submitted on a Supervisor's Incident Report Form.

5.0 Lessee's Safety Manager. Lessee's Safety Manager must perform daily safety inspections of all Jobsites to eliminate unsafe acts and/or conditions in violation of the Lease Agreement Documents, the Safety and Health Plan, Lessee's Site-Specific Safety Plan or OSHA. Lessee's Safety Manager must ensure that all Employees are made aware of the steps to take in the event of an accident and the location of first aid facilities. Lessee's Safety Manager must also perform, as applicable, the following:

- 5.1 Assist in investigating all accidents and implementing immediate corrective actions.
- 5.2 Review safety meeting reports submitted by all Job Superintendents and take necessary action to ensure that meaningful weekly safety meetings are being conducted.
- 5.3 Implement safety-training programs for all Job Superintendents and Employees applicable to their specific responsibilities of each position.
- 5.4 Control the availability and use of necessary safety Equipment, including personal protective Equipment for all Employees.
- 5.5 Cooperate with Safety Managers of other Lessees, and take necessary steps to promptly implement appropriate safety recommendations.
- 5.6 Attend safety meetings held for the Project.

6.0 Miscellaneous Safety Requirements.

- 6.1 **Safe Operations.** Lessee is fully and solely responsible for conducting all operations under this Lease Agreement at all times in such a manner as to avoid the risk of endangerment to health, bodily harm to individuals and damage to property. Lessee must continually and diligently inspect all Equipment, Materials and Work to discover any conditions that might involve such risks and is solely responsible for discovery and correction of any such conditions.
- 6.2 **Safety Orders.** Lessee must have copies of appropriate Federal, State and Local Safety Regulations at all Jobsites available for Employees to review and must comply with all provisions.
- 6.3 **General Safety Provisions.** Lessee must protect the health and safety of Employees, the public and other Persons, prevent damage to property, Materials, supplies, and Equipment and avoid interrupting the normal operation of the Serviced Facility. To achieve these purposes, Lessee must:
 - 6.3.1 Comply with all Governmental Requirements and industry standards pertaining to safety and health at any Jobsite, including, but not limited to:
 - 6.3.1.1 OSHA Construction Safety and Health Regulations, CFR Part 1926
 - 6.3.1.2 CFR Part 1910
 - 6.3.1.3 NFPA Standards
 - 6.3.1.4 Operational Safety on Airport Construction (FAA 150/5370-2C)
 - 6.3.1.5 N.E.C. Standards

6.3.1.6 ANSI Standards

6.3.1.7 EPA Standards

6.4 Establish a Fire Prevention Plan incorporating, as a minimum, OSHA and NFPA standards. Only approved safety cans may be used for flammable and combustible liquids. "No Smoking or Open Flame" signs and fire extinguishers must be provided where required. Approved safety cans must be metal with flash arresters and spring-loaded tops.

6.4.1 Prevent construction/maintenance activities or Materials from hampering any crash-fire-rescue vehicle access to any parts of the Airport.

6.4.2 Continuously remove all bird attractions, such as edibles (food scraps, etc.) or other miscellaneous garbage, trash, or pooled water at all Jobsites where Lessee is performing Work.

6.4.3 Secure all Material and Equipment to prevent displacement from wind or jet blast. No survey or barricade tape is to be used on any Project adjacent to runways or taxiways.

6.4.4 Have temporary electrical service equipped with ground fault current interrupters.

6.4.5 Provide adequate and proper fencing, barricading, marking, and lighting of construction, maintenance or other sections of the Airport that are temporarily closed to normal Airport use.

6.4.6 Ensure that all Employees working on, erecting, dismantling or modifying any scaffolding are trained by a competent Person and maintain documentation concerning all training at the Project.

6.4.7 Ensure that a complete guardrail system is utilized on scaffolding at all working heights and fall protection plan implemented over six (6) feet.

7.0 Cranes. All cranes must have a current annual inspection by an accredited agency prior to working at the Project. This certification must remain current and a copy maintained in the crane at all times. Lessee must provide all required Equipment for the Project in safe mechanical condition.

8.0 Protection of the Public and Property. Lessee must take all steps necessary to ensure protection of the public and property, including, but not limited to, adhering to the following requirements:

- 8.1 When it is necessary to maintain public use of Jobsites involving sidewalks, entrances to buildings, lobbies, corridors, aisles, stairways, and vehicular roadways, Lessee must protect the public with appropriate guardrails, lighting, barricades, temporary fences, overhead protection, temporary partitions, shields, and adequate visibility. This mandatory protection must guard against harmful radioactive rays or particles, flying materials, falling or moving materials and equipment, hot or poisonous materials, explosives and explosive atmospheres, flammable or toxic liquids and gases, open flames, energized electric circuits, or other harmful exposures.
- 8.2 Sidewalks, entrances to buildings, lobbies, corridors, aisles, doors, or exits that remain in use by the public must be kept clear of obstructions to permit safe ingress and egress of the public at all times.
- 8.3 Appropriate warnings, signs and instructional safety signs must be conspicuously posted where necessary. In addition, a signalman must control the movement of motorized equipment in areas where the public might be endangered.
- 8.4 Sidewalk sheds, canopies, catch platforms, and appropriate fences must be provided when it is necessary to maintain public pedestrian traffic adjacent to the erection, demolition or structural alteration of outside walls on any structure.
- 8.5 A temporary fence must be provided around the perimeter of aboveground operations adjacent to public areas, except where a sidewalk shed or fence is required. Perimeter fences must be at least six (6) feet high. They may be constructed of wood or metal frame and sheathing, wire mesh or a combination of both. When the fence is adjacent to a sidewalk near a street intersection, at least the upper section of the fence must be open wire mesh from a point not over four (4) feet above the sidewalk and extending at least twenty-five (25) feet in both directions from the corner of the fence. Fences, which serve also as a component of the airfield security fence, shall be constructed in accordance with applicable Airport specifications.
- 8.6 Safe and adequate pedestrian zones and public transportation stops, as well as pedestrian crossings of the Work at intervals not exceeding three hundred (300 feet) (90 m) also must be maintained, unless otherwise modified by City.

- 8.7 Lessee must furnish, erect, and maintain all barricades, warning signs and markings for hazards necessary to protect the public and the Work. When used during periods of darkness, such barricades, warning signs and hazard markings must be suitably illuminated.
- 8.8 Warning signs and lights, meeting Airport and FAA requirements, must be maintained from dusk to sunrise along the guardrails, barricades, temporary sidewalks, and at every obstruction to the public. These items must be placed at both ends of the protections or obstructions and not over twenty (20) feet apart alongside of the protections or obstructions.
- 8.9 Temporary sidewalks must be provided when a permanent sidewalk is obstructed by Lessee's operations. Guardrails must be provided on both sides of temporary sidewalks.
- 8.10 Fuel-burning lanterns, burn barrels, torches, flares, or other open-flame devices, are prohibited.

9.0 Fall Protection Requirements. These fall protection requirements are mandatory for all trades, involved in performing Work on the Project.

- 9.1 Lessee must take all practical measures to eliminate, prevent and control fall hazards. The Project must be surveyed prior to the commencement of any Work to identify all hazards of Personnel falling from elevations. First consideration must be given to the elimination of those hazards. If a fall hazard cannot be practically eliminated, second consideration must be given to implementing effective permanent means of fall protection.
- 9.2 If a fall hazard cannot be eliminated or fall prevention assured, then effective fall protection means must be planned, implemented and carefully monitored to control the risks of personal injury due to falling. Fall protection systems must be continuous by design and Lessee must control against intermittent or improper use.
- 9.3 All Employees who are working where fall hazards cannot be eliminated or falls prevented must be uniformly equipped, trained and given refresher training every twelve (12) months to minimize adverse effects of accidental falls.
- 9.4 All Employees must utilize a full body harness with two (2) shock-absorbing lanyards to allow continuous protection.
- 9.5 Floor or wall openings must be properly barricaded at all times. Floor covers, on openings greater than three feet, may not be used to protect open holes without the additional protection of a complete handrail system.

- 9.6 Guardrail systems consisting of a top rail, mid-rail and toe plate must be installed on perimeter edges or scaffolding.
- 9.7 Personal fall arrest systems such as vertical lifelines, retractable and shock absorbing lanyards, full body harnesses, netting, etc. must be provided in compliance with OSHA CFR 29, 1926, Subpart M.
- 10.0 Eye, Face and Head Protection Policy.** All Employees shall at all times wear American National Standard Institute (ANSI) approved safety glasses with side shields on the Jobsite.
- 11.0 Activities.** Before excavating any trench five (5) feet or more in depth, Lessee must submit to Authorized Representative a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for the Employees' protection from the hazard of caving ground during the excavation of such trench. A registered Civil Engineer must prepare the plan.
- 12.0 Accident Investigation and Reporting.**
 - 12.1 **ALL ACCIDENTS OR INCIDENTS RESULTING IN PERSONAL INJURY OR PROPERTY DAMAGE MUST BE IMMEDIATELY REPORTED VERBALLY TO THE AUTHORIZED REPRESENTATIVE AND FOLLOWED BY A WRITTEN REPORT WITHIN 24 HOURS OF THE OCCURRENCE.**
 - 12.2 **First Aid.** All accidents which occur from operations or Work performed at the Airport must be referred to the listed panel of physicians, except in cases of extreme emergency.
 - 12.3 **Emergency Telephone Numbers.** Lessee must post a list of emergency telephone numbers; to include doctor and ambulance, fire, etc., next to telephones at the Serviced Facility.
 - 12.4 **Critical Injuries.** The Authorized Representative must be notified immediately in the following cases:
 - 12.4.1 Spinal cord injury;
 - 12.4.2 Head trauma;
 - 12.4.3 Amputations;
 - 12.4.4 Fatality;
 - 12.4.5 Severe burns;
 - 12.4.6 Heart attack; and
 - 12.4.7 Hospitalizations.
 - 12.5 Lessee must secure the affected area immediately after the accident in order to prevent any alteration of the scene before the investigation. The

area is to be cordoned off and an individual posted by Lessee to restrict unauthorized personnel as necessary.

- 12.6 Lessee shall not make any news releases or statements to the public regarding any matters related to the accidents or incidents at the Serviced Facility.
- 12.7 **Witness Statements.** Lessee must assist the City's Authorized Representative in obtaining witness statements when there has been an accident. To the extent practicable, all statements are to be recorded and then typed. The witness must sign and date the statement after it is typed.
- 12.8 The Incident/Accident Report form must be filed within twenty-four (24) hours of the occurrence.
- 12.9 Appropriate drug screening must be conducted after the incident or accident.

13.0 Vehicular Traffic (As Applicable).

- 13.1 **Lighting and other Hazard Markings.** Lessee must furnish, erect and maintain markings and associated lighting of open trenches, excavations, temporary stock piles and its parked construction Equipment that may be hazardous to the operation of emergency fire-rescue or maintenance vehicles on the Airport in reasonable conformance to FAA Advisory Circular 150/5370-2D, Operational Safety on Airports during Construction. Lessee must identify each motorized vehicle or piece of construction equipment in reason conformance to FAA Advisory Circular 150-5370-2D.
- 13.2 The Lessee must also submit for approval a comprehensive plan detailing how traffic will be maintained on all Work under this Lease Agreement. For vehicular and pedestrian traffic, Lessee must furnish, erect and maintain barricades, warning signs, lights and other traffic control devices in reasonable conformity with the Manual of Uniform Traffic Control Devices for Streets and Highways (published by United States Government Printing Office).

14.0 Fire Prevention Program. Fire Prevention Program must be submitted in writing to City's Authorized Representative for review and coordination with other Jobsite activities prior to commencing Work at any Jobsite. Such program must include:

- 14.1 Restriction of burning to designated areas. No unauthorized fires shall be permitted on Jobsite.

- 14.2 Assignment of fire watches, trained and equipped to prevent or control fires, for all welding and burning operations. Fires should be monitored for three hours after the burning.
- 14.3 Proper identification, storing, handling and use of inflammable Material to prevent accidental ignition.
- 14.4 Adequate fire extinguishing Equipment appropriate for the operations being performed must be provided and Employees must be trained in the maintenance and use of such Equipment.
- 14.5 Evacuation procedures and fire drills as required by City's Authorized Representative

15.0 Hazard Communication Program. A Hazard Communication Program must be submitted in writing to the Authorized Representative for review and coordination with other Jobsite activities prior to commencing Work at any Jobsite. This Program shall include:

- 15.1 Receipt/Identification of Material Safety Data Sheets (MSDS) for Materials being brought onto the Jobsite by Lessee or its Subcontractors/Subconsultants.
- 15.2 Employee training on MSDS's and in the handling and disposal of Materials that fall under statutory regulations.
- 15.3 A disposal plan for removal of hazardous Materials from the Jobsite. This plan must meet all federal/national, state and other applicable governmental requirements.

16.0 Explosives.

- 16.1 Transport of Explosives. Explosives may not be transported to any Jobsite except when required to perform the Work under this Lease Agreement and with prior notice of the City's Authorized Representative. Lessee must properly purchase, transport, store, safeguard, handle and use explosives required to perform the Work under this Lease Agreement. Lessee must employ competent and qualified Employees for the use of explosives, and notwithstanding any other provision in this Lease Agreement to the contrary, assumes full responsibilities for the cost of any incidental or consequential damages caused by the use of explosives. Residual surplus explosives shall be promptly removed from the Jobsite and properly disposed of by Lessee.

EXHIBIT I

MILESTONES AND LIQUIDATED DAMAGES

EXHIBIT I

MILESTONES AND LIQUIDATED DAMAGES

1. The parties hereby agree that the damages which City will sustain as a result of Lessee's failure to meet Ground Lease Milestones are difficult or impossible to determine with certainty and, therefore, have in good faith estimated as fair compensation, the Liquidated Damages as set forth below. If Lessee fails to deliver the equipment or materials or perform the services within the times specified in this Lease Agreement for the established Milestones & Beneficial Occupancy, or any extensions granted in writing, the Lessee shall pay to City as fixed, agreed and Liquidated Damages for each calendar day or minute of delay the sum(s) specified below, which amounts shall be independently calculated as follows:

NO.	GROUND LEASE MILESTONES AND LEASE REQUIREMENTS	LIQUIDATED DAMAGES
1.	Lessee shall achieve Beneficial Occupancy of the initial (March 1, 2017) Program Requirements and begin accepting materials by March 1, 2017.	One Thousand Dollars and Zero Cents (\$1,000.00) per calendar day.
2.	The Facility must repurpose/reprocess/recycle at least ninety percent (90%) of MSW generated by ATL and DPW and delivered to the ATL Energy Park by January 1, 2020.	One Thousand Dollars and Zero Cents (\$1,000) per calendar day.
3.	Following Beneficial Occupancy, failure to accept all delivered MSW for a period exceeding seventy two (72) business hours.	Actual tipping costs incurred by City.

2. **Application of Liquidated Damages not a Change.** The application of Liquidated Damages shall not effect a change in the Beneficial Occupancy or relieve Lessee of its obligation to improve its progress to achieve, or to mitigate the failure to achieve, the Beneficial Occupancy Date or stated area reopening.
3. **Payment of Liquidated Damages.** Payments of Liquidated Damages shall become due immediately upon failure to achieve the stated milestone.
4. **No Restriction of Rights and Remedies.** Nothing in this clause shall operate to restrict any other rights and remedies available to City at law or under this Lease Agreement.

Appendix A

Office of Contract Compliance Requirements



CITY OF ATLANTA

Kasim Reed
Mayor

SUITE 1700
55 TRINITY AVENUE, SW
ATLANTA, GA 30303
(404) 330-6010 Fax: (404) 658-7359
Internet Home Page: www.atlantaga.gov

OFFICE OF
CONTRACT COMPLIANCE
Hubert Owens
Director
howens@atlantaga.gov

September 30, 2014

RE: Project No.: FC 7782, Green Acres Atlanta Energy Park.

Dear Prospective City of Atlanta Bidder:

The Office of Contract Compliance information is an integral part of every City of Atlanta bid. All Bidders are required to make efforts to ensure that businesses are not discriminated against on the basis of their race, ethnicity or gender, and to demonstrate compliance with these program requirements at or prior to the time of Bid opening, or upon request by OCC. Bidders are required to ensure that prospective subcontractors, vendors, suppliers and other potential participants are not denied opportunities to compete for work on a City contract on the basis of their race, ethnicity, or gender, and must afford all firms, including those owned by racial or ethnic minorities and women, opportunities to participate in the performance of the business of the City to the extent of their availability, capacity and willingness to compete. Please read all of the information very carefully. Pay close attention to the specific goal of minority and female business enterprises for this project and the EBO program reminders listed on page 6.

If you have any questions about the information included in this section of the solicitation, please contact the City of Atlanta Office of Contract Compliance at (404) 330-6010.

The City of Atlanta looks forward to the opportunity to do business with your company.

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CITY OF ATLANTA

EQUAL BUSINESS OPPORTUNITY EQUAL EMPLOYMENT OPPORTUNITY

POLICY STATEMENT

It is the policy of the City of Atlanta to promote full and equal business opportunity for all persons doing business with the City. The City must ensure that firms seeking to participate in contracting and procurement activities with the City are not prevented from doing so on the basis of the race or gender of their owners. The City is committed to ensuring that it is not a passive participant in any private scheme of discrimination. To ensure that businesses are not discriminated against with regard to prime contracting, subcontracting or other partnering opportunities with the City, the City has developed an Equal Business Opportunity (EBO) Program. It is also the policy of the City of Atlanta to actively promote equal employment opportunities for minority and female workers and prohibit discrimination based upon race, religion, color, sex, national origin, marital status, physical handicap or sexual orientation through the City's Equal Employment Opportunity (EEO) Program. The purpose of the Equal Business Opportunity and Equal Employment Opportunity Programs is to mitigate the present and ongoing effects of the past and present discrimination against women and minority owned businesses and women and minority workers so that opportunity, regardless of race or gender, will become institutionalized in the Atlanta marketplace. It is important to note that all bidders, without exception, including minority and female owned business enterprises, must comply with the City of Atlanta's EBO and EEO Program requirements. Goals for minority and female business enterprises are set for this project on page 6.

Implementation of EBO Policy

The Office of Contract Compliance will review information submitted by Bidders pertaining to efforts to promote opportunities for diverse businesses, including M/FBEs, to compete for business as subcontractors and/or Suppliers. A Bidder is eligible for award of a City contract upon a finding by OCC that the Bidder has engaged in, and provided with its bid submission documentation of, efforts to ensure that its process of soliciting, evaluating and awarding subcontracts, placing orders, and partnering with other companies has been non-discriminatory. To assist prime contractors in this effort, the Office of Contract Compliance has set forth in this solicitation document the M/FBEs goals within the relevant NAICS Codes, for this Project.

For subcontracting, the Subcontractor Project Plan must include all subcontractors to be utilized on the project, detail the services to be performed, the dollar value of the work to be performed by each subcontractor, and the City of Atlanta M/FBE certification number and supplier id number.

For Suppliers, the Subcontractor Project Plan must include all suppliers to be utilized on the project, the supplies to be provided, including the dollar value of the supplies being provided and the City of Atlanta M/FBE certification number and supplier id number.

Determination of Non-discrimination During Bid Process

No Bidder shall be awarded a contract on an Eligible Project unless the Office of Contract Compliance determines that the Bidder has satisfied the non-discrimination requirements of section 2-1448 on such Eligible Project. Accordingly, each Bidder shall submit with each Bid the following

1. Covenant of Non Discrimination. Each Bidder shall submit with her/his Bid a Covenant of Non-Discrimination which is set forth herein as Exhibit EBO1.
2. Outreach efforts documentation. Each bidder shall submit with her/his bid written documentation demonstrating the bidder's outreach efforts to identify, contact, contract with, or utilize businesses, including certified MFBEs and SBEs, as subcontractors or suppliers on the contract. This information shall be set forth on Exhibit EBO2, which is included herein.
3. Subcontractor project plan. Each bidder shall submit with her/his bid a completed and signed subcontractor project plan, in a form approved and provided by the office of contract compliance, which lists the name, address, telephone number and contact person of each subcontractor or other business to be used in the contract, the NAICS Code and the type of work or service each business will perform, the dollar value of the work and the scope of work, the ownership of each business by race and gender, if applicable the AABE, APABE, FBE, or HABE certification number of each business, and any other information requested by the office of contract compliance. In order for the office of contract compliance to officially consider a firm to be an MFBE, the MFBE firm must be certified by or have a certification application pending with the office of contract compliance prior to the bidder's submission of the bid. The subcontractor project plan shall not be changed or altered after approval of the plan and award of the contract without the written approval of the director of the office of contract compliance. A written letter to the director of the office of contract compliance requesting approval to

change the subcontractor project plan must be submitted prior to any change in the plan or termination of an MFBE's contract.

OCC Review of Bidder Submissions

The Office of Contract Compliance shall determine whether a Bidder has satisfied the non-discrimination requirements of section 2-1448 based on its review of the Covenant of Non Discrimination, the Outreach Efforts Documentation, the Subcontractor Project Plan, and its review of other relevant facts and circumstances, including complaints received as part of the bid process. In reviewing the documents submitted by a Bidder to determine whether the Bidder has satisfied the non-discriminatory practices requirement of this section, the Office of Contract Compliance will consider, among other things, the total project dollars subcontracted to or expended for services performed by other businesses, including certified MFBEs, whether such businesses perform Commercially Useful Functions in the work of the contract based upon standard industry trade practices, whether any amounts paid to Supplier businesses are for goods customarily and ordinarily used based upon standard industry trade practices, and the availability of certified MFBEs within the relevant NAICS Codes for such Eligible Project.

(a) Receipt of Complaint of Discrimination in the Bid Process

The Office of Contract Compliance shall accept complaints of alleged discrimination during the bid process regarding any participant in the bid process. Where the complaint of discrimination is specific to the procurement which is under consideration by the city, the office of contract compliance may investigate said complaint, determine its validity, and determine whether the actions complained of impact the bidder's responsiveness on the specific procurement. Allegations of discrimination based on events, incidents or occurrences which are unrelated to the specific procurement will be placed in the bidder's file maintained in the vendor relations database and handled in accordance with the procedure established in the city's vendor relations subdivision, section 2-1465, et seq.

(b) Determination of Violation of EBO Process

Determination of violation of EBO process. Where the office of contract compliance investigates a complaint of discrimination that is related to the specific bid process, the details of that investigation, including findings, shall be recorded and maintained in the vendor relations database, pursuant to section 2-1471.

(c) Office of Contract Compliance Determination of Non-Compliance

Office of contract compliance determination of non-compliance. When, based upon the totality of the circumstances, the office of contract compliance determines that a bidder fails to satisfy the requirements of section 2-1448(a) of a city bid solicitation, the director of the office of contract compliance shall present a written determination of non-compliance to the Chief Procurement Officer which states the determination and lists the reasons for the determination. A bid that does not comply with the requirements set forth in section 2-1448(a) shall be deemed non-responsive and rejected.

Equal Business Opportunity Program Bid/RFP Submittals

The Office of Contract Compliance will make any determinations of non-responsiveness. The covenant of non-discrimination, the outreach efforts documentation, the subcontractor project plan, and any other information required by OCC in the solicitation document pursuant to section 2-1448(b) must be completed in their entirety by each bidder and submitted with the other required bid documents in order for the bid to be considered as a responsive bid. Failure to timely submit these forms, fully completed, will result in the bid being considered as a non-responsive bid, and therefore, excluded from consideration.

Monitoring Of EBO Policy

Upon execution of a contract with the City of Atlanta, the successful bidder's Subcontractor Project Plan will become a part of the contract between the bidder and the City of Atlanta. The Subcontractor Project Plan will be monitored by the City of Atlanta's Office of Contract Compliance for adherence with the plan. The successful bidder will be required to provide specific EBO information on a monthly basis that demonstrates the use of subcontractors and suppliers as indicated on the Subcontractor Project Plan. The failure of the successful bidder to provide the specific EBO information by the specified date each month shall be sufficient cause for the City to withhold approval of the successful bidder's invoices for progress payments, increase the amount of the successful bidder's retainage, or evoke any other penalties as set forth in the City of Atlanta Code of Ordinances, Section 2-1452.

Implementation of EEO Policy

The City effectuates its EEO policy by adopting racial and gender work force availability for every contractor performing work for the City of Atlanta. These percentages are derived from the work force demographics set forth in the 2000 Census EEO file prepared by the United States Department of Commerce for the applicable labor pool normally utilized for the contract.

Monitoring of EEO Policy

Upon award of a contract with the City of Atlanta, the successful bidder must submit a Contract Employment Report (CER), describing the racial and gender make-up of the firm's work force. If the CER indicates that the firm's demographic composition does not meet the adopted EEO goals, the firm will be required to submit an affirmative action plan setting forth the steps to be taken to reach the adopted goals. The CER and the affirmative action plan, if necessary, will become a part of the contract between the successful bidder and the City of Atlanta. Compliance with the EEO requirements will be monitored by the Office of Contract Compliance.

First Source Jobs Program Policy Statement

It is the policy of the City of Atlanta to provide job opportunities to the residents of the City of Atlanta, whenever possible. Every contract with the City of Atlanta creates a potential pool of new employment opportunities. The prime contractor is expected to work with the First Source Jobs Program to fill at least 50% of all new entry-level jobs, which arise from this project, with residents of the City of Atlanta. For more specific information about the First Source Jobs Program contact:

**Michael Sterling
Interim Executive Director
First Source Jobs Program
Atlanta Workforce Development Agency
818 Pollard Boulevard
Atlanta, GA 30315
(404) 546-3001**

Joint Venture Participation on City of Atlanta EBO Projects

The City of Atlanta encourages, where economically feasible, the establishment of joint ventures to ensure prime contracting opportunities for all businesses, including non-discriminatory outreach efforts to utilize certified minority and female business enterprises on Eligible Projects. On selected projects valued at five million dollars and over, the Office of Contract Compliance shall determine on a project-by-project basis whether non-discriminatory outreach efforts to enter into a joint venture shall be required. On such Eligible Projects, joint venture member businesses must have different race ownership, different gender ownership or both. The minority and female business enterprise members of the joint venture on projects on which a Joint Venture is required must be certified as such by the Office of Contract Compliance, and the joint venture team shall include in its bid submittal the M/FBE certification number of each M/FBE joint venture member.

A joint venture may submit its agreement to the Office of Contract Compliance for pre-approval no later than fourteen (14) calendar days prior to the date set for receipt of bids on an Eligible Project. Otherwise, agreements must be submitted on or before the date set for receipt of bids on an Eligible Project.

Components of a Joint Venture Agreement

The Joint Venture agreement should include at a minimum:

- The initial capital investment of each venture partner.
- The proportional allocation of profits and losses to each venture partner.
- The sharing of the right to control the ownership and management of the joint venture.
- A detailed description of the discrete portion of work or tasks that will be performed by each of the venture partners.
- The method of, and responsibility for, accounting.
- The methods by which disputes are resolved.
- All other pertinent factors of the joint venture.

Equal Business Opportunity M/FBE Goals for this Project

Project No.: FC 7782, Green Acres Atlanta Energy Park

Part 1: All proponents must ensure that non-discriminatory practices are utilized to enter into a Joint Venture Agreement in accordance with the City of Atlanta's EBO Ordinance. The Joint Venture Agreement, at the very least, should reflect details of the member company's/companies involvement in the **Green Acres Atlanta Energy Park** project throughout the life of the contract (See Page 6).

Part 2: All proponents must submit a EBO utilization Plan (EBO 3) identifying MBE/FBE firms and their level of participation on this project. Additionally proponents must ensure that non-discriminatory practices are utilized during efforts to engage minority and female subcontractors and suppliers throughout the life of the contract. All outreach efforts must be documented and included with this bid submittal.

The availability of certified minority and female firms for the procurement categories listed in this project are:

18.1% AABE, APABE & HABE

and

8.3% FBE

Please be reminded that no Bidder shall be awarded a contract on an Eligible Project unless the Office of Contract Compliance determines that the Bidder has satisfied the non-discrimination requirements of section 2-1448 on such Eligible Project. Details of the O.C.C. review process for determination of non-discrimination are outlined on page 2 of this document.

Note: The selected developer must ensure the awarded design firm includes 18.1% MBE and 8.3% FBE participation on the design phase of the project. Additionally, the selected developer must ensure the awarded construction firm to include 17.5% AABE and 13% FBE participation on the construction related phase of the project. The City of Atlanta's Subcontractor Contact form (EBO 2) and Subcontractor Utilization form (EBO 3) will be provided for the selected proponents to list their subcontractors at the appropriate time.

Equal Business Opportunity Program Reminders

1. **Joint Venture Agreements.** The Joint Venture member businesses must have different race ownership, different gender ownership, or both. MFBE members of the Joint Venture must be certified as such by the Office of Contract Compliance. The Joint Venture team shall include in its submittal the MFBE certification number of each MFBE Joint Venture member.
2. **Subcontractor Certification.** It is the prime contractor's responsibility to verify that MFBEs included on the Subcontractor Project Plan are certified by the City of Atlanta's Office of Contract Compliance, or have a certification application pending with the City of Atlanta's Office of Contract Compliance at the time that the bid is submitted.
3. **Reporting.** The successful bidder must submit monthly EBO participation reports to the Office of Contract Compliance.
4. **Subcontractor Contact Form.** It is required that bidders list and submit information on **all subcontractors** they solicit for quotes, all subcontractors who contact them with regard to the project, and all subcontractors they have discussions with regarding the project. Failure to provide complete information on this form will result in your bid being declared non-responsive.
5. **EBO Ordinance.** The EBO Program is governed by the provisions of the EBO Ordinance set forth in the City of Atlanta Code Division 12, section 2 - 1441 through 2 -1464. The ordinance can be obtained from the City of Atlanta Clerk's Office at (404) 330-6032.
6. **Supplier Participation.** In order to receive full M/FBE credit, suppliers must manufacture or warehouse the materials, supplies, or equipment being supplied for use on the Eligible Project.

COVENANT OF NON-DISCRIMINATION

The undersigned understands that it is the policy of the City of Atlanta to promote full and equal business opportunity for all persons doing business with the City of Atlanta. The undersigned covenants that we have not discriminated, on the basis of race, gender or ethnicity, with regard to prime contracting, subcontracting or partnering opportunities. The undersigned further covenants that we have completed truthfully and fully the required forms EBO-2 and EBO-3. Set forth below is the signature of an officer of the bidding entity with the authority to bind the entity.

Signature of Attesting Party

Title of Attesting Party

On this ____ day of _____, 20 __, before me appeared _____, the person who signed the above covenant in my presence.

Notary Public

Seal

CONTRACTOR CONTACT FORM

List all potential joint venture partners, protégés, subcontractors or suppliers (regardless of ethnicity/gender) that were contacted regarding this project.

Name of Contractor/ Supplier (indicate if contact was for JV or protégé participation)	City of Atlanta Supplier Number	Company Name, Contact Name, Address and Phone Number	City Of Atlanta Business License? (Yes or No)	Type of Work Solicited for	Business Ownership (see code below)	Certification No. and Expiration Date	Results of Contact

Name of Contractor/ Supplier (indicate if contact was for JV or protégé participation)	City of Atlanta Supplier Number	Company Name, Contact Name, Address and Phone Number	City Of Atlanta Business License? (Yes or No)	Type of Work Solicited for	Business Ownership (see code below)	Certification No. and Expiration Date	Results of Contact

Business Ownership Code: AABE - African American Business Enterprise, HABE - Hispanic American Business Enterprise, FBE - Female Business Enterprise. APABE - Asian (Pacific Islander) American Business Enterprise

Proponent Name: _____ Project Name: _____ FC#: _____

Signature: _____ Date: _____

EQUAL BUSINESS OPPORTUNITY SUBCONTRACTOR PROJECT PLAN **SUBCONTRACTOR/SUPPLIER UTILIZATION**

List all Majority, Minority and Female Business Enterprise subcontractors/suppliers, including lower tiers, to be used on this project.

Name of Sub-contractor/Supplier	City of Atlanta Supplier ID Number	Company Name, Address and Phone Number	City Of Atlanta Business License? (yes or no)	NAICS Code(s)	Type of Work to be Performed	Ownership of Business (see code below)	Certification No. and Expiration Date	Dollar (\$ Value of Work & Scope of Work	Percentage of Total Bid Amount

Total MBE% _____
Total FBE% _____

Code: AABE - African American Business Enterprise, HABE - Hispanic American Business Enterprise, FBE - Female Business Enterprise.
APABE - Asian (Pacific Islander) American Business Enterprise

Proponent's Co. Name: _____ Date: _____ FC#: _____
Proponent's Contact Number: _____ Project Name: _____
Signature: _____

First Source Job Information

Company Name: _____

FC No.: _____

Project Name: _____

The following entry level positions will become available as a result of the above referenced contract with the City of Atlanta.

1.

2.

3.

4.

5.

Include a job description and all required qualifications for each position listed above.

Identify a company representative and contact phone number who will be responsible for coordinating with the First Source Jobs Program.

Company Representative: _____

Phone Number: _____

First Source Jobs Agreement

THIS AGREEMENT REGARDING THE USE OF THE FIRST SOURCE JOBS PROGRAM BY CONTRACTORS WITH THE CITY OF ATLANTA TO FILL ENTRY LEVEL JOBS is made and entered into by _____

This _____ day of _____, 201__.

The City of Atlanta requires the immediate beneficiary or primary contractor for every eligible project to enter into a First Source Jobs employment agreement. The contractor agrees to the following terms and conditions:

- The first source for finding employees to fill all entry level jobs Created by the eligible project will be the First Source Program.
- The contractor will make every effort to fill 50% of the entry level jobs created by this eligible project with applicants from the First Source Program.
- The contractor shall make good faith effort to reach the goal of this employment agreement.
- Details as to the number and description of each entry level job must me provided with the bid.
- The contractor shall comply with the spirit of the First Source Jobs Policy beyond the duration of this agreement and continue to make good faith attempts to hire employees of similar backgrounds to those participating in the First Source Program.
- The contractor as a condition of transfer, assignment or otherwise shall require the transferee to agree in writing to the terms of the employment Agreement.

Upon a determination that a beneficiary or contractor has failed to comply with the terms of this Agreement, the City may impose the following penalties based on the severity of the non-compliance:

- The City of Atlanta may withhold payment from the contractor.
- The City of Atlanta may withhold 10 percent of all future payments on the contract until the contractor is in compliance
- The City of Atlanta may refuse all future bids on city projects or applications for financials assistance in any form from the City until the contractor demonstrated that the First Source requirements have been met, or cancellation of the eligible project.
- The City of Atlanta may cancel the eligible project.

All terms stated herein can be found in the City of Atlanta Code of Ordinances Sections 5-8002 through 5-8005.

The undersigned hereby agrees to the terms and conditions set forth in this agreement.

Contractor

FORM 5

Appendix B

Illegal Immigration Reform and Enforcement Act Forms

Appendix C

Sample Rental Matrix